

Exhibit C

A90308E
RONALD B. KEMNITZER MARCH 26, 2015

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

- - - - -	:	
LISA DUER,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	FILE NO.
vs	:	
	:	14-cv-01589-ELR
BENSUSSEN DEUTSCH &	:	
ASSOCIATES, INC.; ELI	:	
LILLY AND COMPANY,	:	
	:	
Defendant.	:	
	:	
- - - - -	:	

VIDEOTAPED DEPOSITION OF

RONALD B. KEMNITZER

ROANOKE, VIRGINIA

MARCH 26, 2015

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1	APPEARANCES:	1	ROANOKE, VA; THURSDAY, MARCH 26, 2015; 8:34 a.m.
2		2	
3	FOR THE PLAINTIFF:	3	THE VIDEOGRAPHER: I am Lisa Whitaker, your
4	FLYNN PEELER PHILLIPS	4	videographer, and I represent Atkinson-Baker in
5	BY: CHARLES E. PEELER	5	Glendale, California. 08:34:43
6	517 West Broad Avenue	6	The date is March 26th, 2015. The time is
7	Albany, GA 31701	7	8:34 a.m. This deposition is taking place at Hotel
8	229.446.4886	8	Roanoke and Conference Center, 110 Shenandoah Avenue
9	cpeeler@fpplaw.com	9	Northeast, Roanoke, Virginia.
10	FOR THE DEFENDANT BENSUSSEN DEUTSCH & ASSOCIATES, INC.:	10	This is Case No. 14-cv-01589-ELR, entitled 08:34:59
11	SEED IP	11	Duer versus JBDA and Eli Lilly. The deponent is Ronald
12	BY: MICHAEL P. HOGAN	12	Kemnitzer. This deposition is being taken on behalf of
13	701 Fifth Avenue, Suite 5400	13	the defendant.
14	Seattle, WA 98104	14	Your court reporter is Cece Brookman, from
15	206.694.4819	15	Atkinson-Baker. 08:35:22
16	mikeh@seedip.com	16	Will the attorneys please introduce
17	FOR THE DEFENDANT ELI LILLY AND COMPANY	17	themselves.
18	FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER,	18	MR. PEELER: My name is Charlie Peeler, and
19	LLP	19	I represent the plaintiff.
20	BY: L. SCOTT BURWELL	20	MR. HOGAN: Michael Hogan from Seed IP in 08:35:30
21	Two Freedom Square	21	Seattle, on behalf of defendant Bensussen Deutsch &
22	11955 Freedom Drive	22	Associates, Inc, or BDA.
23	Reston, VA 20190	23	MR. BURWELL: Scott Burwell from Finnegan,
24	571.203.2700	24	on behalf of defendant Eli Lilly and Company.
25	scott.burwell@finnegan.com	25	MS. PALMBERG: Arleen Palmberg, Eli Lilly
	ALSO PRESENT:		
	Ms. Arleen Palmberg, Assistant General		
	Patent Counsel, Eli Lilly and Company		
	Ms. Lisa Whitaker, Videographer		
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1	INDEX	1	and Company.
2	WITNESS: RONALD B. KEMNITZER	2	
3		3	RONALD B. KEMNITZER,
4	EXAMINATION PAGE	4	having been sworn by the Registered Professional
5	By Mr. Hogan 5	5	Reporter, Cecelia Brookman, to tell the truth, the whole
6	By Mr. Peeler 171	6	truth, and nothing but the truth, testified as follows:
7	By Mr. Hogan 173	7	
8		8	EXAMINATION
9	EXHIBITS	9	BY MR. HOGAN:
10	NUMBER DESCRIPTION PAGE	10	Q. Good morning, sir. 08:35:58
11		11	A. Good morning.
12	K-1 Listing of material reviewed by Mr. Kemnitzer 17	12	Q. Could you please -- well, before we start, I want
13		13	to -- Charlie, we have an upcoming briefing deadline for
14	K-2 Notice of subpoena for deposition 25	14	responsive marketing briefs. Can I have a promise from
15	K-3 Copy of web site for Mr. Kemnitzer 29	15	you that we'll get a signed errata within two weeks of 08:36:11
16		16	his deposition?
17	K-4 Plaintiff Lisa Duer Opening Claim Construction Brief 43	17	MR. PEELER: I don't know when I'm going to
18	K-5 Declaration of Mr. Kemnitzer 43	18	get the transcript, Mike, so how can I promise that?
19	K-6 United States Patent 48	19	MR. HOGAN: We can order them within a week
20	K-7 United States Patent and Trademark Office Issue Notification 56	20	today. 08:36:23
21	K-8 Copy of pages from dictionary 138	21	MR. PEELER: A week turnaround? I'll talk
22		22	to Ron about it.
23		23	MR. HOGAN: We can get the transcript
24		24	probably in a week or probably three days. Depends if
25	08:34:36	25	we talk to the reporter. All I'm saying is we would 08:36:33
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1	like -- I think we're entitled to a corrected transcript		1	MR. PEELER: And then also I want to note	
2	before the next set of briefing is due. That's what I'm		2	for the record that this deposition is limited to claim	
3	asking for.		3	construction issues.	
4	MR. PEELER: I'll talk to Ron about it, see		4	MR. HOGAN: Agreed.	
5	what his schedule is.	08:36:45	5	BY MR. HOGAN:	08:38:24
6	MR. HOGAN: Okay. We'll visit that later, I		6	Q. Okay. Sir, would you please give me your name	
7	think, before we're done today.		7	and address.	
8	BY MR. HOGAN:		8	A. Ronald B. Kemnitzer. I reside at 2103 Grandin	
9	Q. Sir, is there any reason you're unable to testify		9	Road Southwest, Roanoke, Virginia.	
10	completely and truthfully today?	08:37:03	10	Q. Grandin?	08:38:35
11	A. No.		11	A. Grandin, G-r-a-n-d-i-n.	
12	Q. You're not currently on any medication?		12	Q. Could you just briefly give me your educational	
13	A. No.		13	background.	
14	Q. You haven't been drinking this morning?		14	A. I have an undergraduate degree in industrial	
15	A. No.	08:37:10	15	design from the University of Cincinnati. I have a	08:38:57
16	Q. Okay. You've been deposed before, I gather?		16	master's degree in design from Northern Illinois	
17	A. Yes.		17	University.	
18	Q. Okay. So just real quick ground rules. I'm		18	Q. Anything further? That's all?	
19	going to ask you some questions today.		19	A. A partial study for master's in business	
20	A. Uh-huh.	08:37:19	20	education, business administration.	08:39:23
21	Q. If you don't understand the question, please ask		21	Q. Did you complete that?	
22	me to repeat it; I'm happy to do that. If you don't		22	A. No, I did not.	
23	understand it for any reason, any word -- I speak		23	Q. Where was that?	
24	quickly sometimes. If you didn't get it, just tell me		24	A. Loyola College, Baltimore, Maryland, and Chicago.	
25	to repeat it, I'm happy to do that. Okay?	08:37:29	25	Q. I'm going to ask you some background questions	08:39:38
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1	A. Okay.		1	that are necessary for a deposition, nothing personal.	
2	Q. If you answer the question, I'm assuming you		2	Have you ever been convicted of a crime, sir?	
3	understood the question as asked, or we'll clarify it.		3	A. No, other than minor traffic offenses.	
4	Is that fair?		4	Q. We're not counting those.	
5	A. Okay.	08:37:37	5	A. Okay.	08:39:50
6	Q. If you want to take a bio break, you're certainly		6	Q. Ever been excused from an academic post you've	
7	entitled to do that. I would just ask that if we have a		7	ever held?	
8	question pending or awaiting an answer, I get an answer		8	A. No.	
9	and then we do a break after that. Is that fair?		9	Q. Ever been accused of academic or other ethics	
10	A. Okay, that's fair.	08:37:48	10	violations?	08:40:00
11	MR. PEELER: Let me just ask you, we're		11	A. No.	
12	going to reserve all objections except for those to the		12	Q. What's your current employment?	
13	form of the question and responsiveness of the answer.		13	A. I'm retired. I'm retired with a title of	
14	Is that agreeable?		14	professor emeritus. So technically speaking, I'm	
15	MR. HOGAN: I just think we're going to	08:38:01	15	retired, but I still have, I guess, a formal association	08:40:15
16	follow federal rules. I figure, if you have a form --		16	with the university.	
17	MR. PEELER: That's what they say, unless		17	Q. That's Virginia Tech?	
18	you have a different understanding of them.		18	A. Virginia Tech. Virginia Polytechnic Institute	
19	MR. HOGAN: I'm going to follow federal		19	and State University.	
20	rules.	08:38:10	20	Q. Virginia Tech is okay, for our purposes?	08:40:31
21	MR. PEELER: Is that your understanding of		21	A. Virginia Tech is fine.	
22	them?		22	Q. Okay. As professor emeritus, do you have space	
23	MR. HOGAN: I'm not going to say your		23	at the university still?	
24	understanding is correct or incorrect. I'm saying the		24	A. I do.	
25	federal rules will control here.	08:38:16	25	Q. So you have an office?	08:40:39
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1	A. Yes.		1	evenly split.	
2	Q. Do you go in every day?		2	Q. So you were a teacher -- let me back up -- a	
3	A. No.		3	professor at Virginia Tech; right?	
4	Q. Once a week?		4	A. Yes.	
5	A. Once or twice a semester.	08:40:44	5	Q. How long did you do that for?	08:43:06
6	Q. Okay. You don't teach any classes, do you?		6	A. I was with Virginia Tech for 10 years.	
7	A. I taught a class in the fall semester this		7	Q. During that time at Virginia Tech, did you teach	
8	academic year, one class. They met one day a week.		8	classes?	
9	Q. Fall 2014?		9	A. Yes.	
10	A. Uh-huh.	08:41:08	10	Q. Did you teach any classes dealing with patent law	08:43:14
11	Q. Do you teach anything now?		11	or patent issues?	
12	A. No.		12	A. Those issues are a part of our curriculum, part	
13	Q. Do you have a research group?		13	of our studio curriculum. There are five years of --	
14	A. No.		14	four years of studio classes titled industrial design	
15	Q. You're not on the advisory board of any students?	08:41:13	15	studio. And we cover patent issues in all of those	08:43:39
16	A. No.		16	classes on an ongoing basis, but we don't have a	
17	Q. Advisory board is probably the wrong term, but		17	specific class that's tailored to that.	
18	it's the...		18	Q. Did you teach those patent classes?	
19	A. No. Aside from that one class that I taught to		19	A. Yes.	
20	cover another professor who was on leave, I've had no	08:41:27	20	Q. What type of classes did you teach personally?	08:43:53
21	formal interaction with the school at all.		21	A. I taught virtually all of the classes in the	
22	Q. And you consult; is that correct?		22	industrial design program, to include the studio class I	
23	A. Yes.		23	just mentioned, human factors, drawing classes, history	
24	Q. I'll ask you some questions about your teaching		24	of industrial design, design research methods.	
25	experience. Let me back up, sorry.	08:41:49	25	Q. What's a studio class?	08:44:10
	Page 10			Page 12	
1	You consult. Generally what do you consult		1	A. A studio class is a class where we teach students	
2	for, what clients? I don't want names, obviously,		2	how to design, how to organize a problem, how to	
3	nothing confidential. What kind of consulting.		3	research issues, how to do patent searches, how to look	
4	A. My consulting at this point in my life is		4	at prior art, how to examine the current state of the	
5	consulting as an expert witness. My consulting work as	08:42:02	5	art, and then to start to conceptualize concepts,	08:44:28
6	a designer is -- I'm retired.		6	solutions to those problems, and then carry those	
7	Q. You're an expert witness. You consult as an		7	through a systematic process of evolution and refinement	
8	expert witness largely on design matters?		8	to a final design where they can be as detailed as	
9	A. Design and utility matters and trade dressing		9	having CAD files for production.	
10	matters.	08:42:24	10	Q. That is design patents, utility patents?	08:44:46
11	Q. You say design and utility. You're familiar with		11	A. Yes.	
12	patents; right?		12	Q. Both. Do you consider yourself an expert in	
13	A. Yes.		13	patent law?	
14	Q. United States patents?		14	A. I consider myself to be knowledgeable, a	
15	A. Yes.	08:42:29	15	knowledgeable designer on patent law.	08:45:05
16	Q. You said trade dress as well?		16	Q. I'm not sure I understand that. A knowledgeable	
17	A. Yes.		17	designer about patent law?	
18	Q. You consult largely for plaintiffs, largely for		18	A. Well, your question was do I consider myself an	
19	defendants, mixture of both?		19	expert on patent law. Not from the context of	
20	A. Mixture of both.	08:42:38	20	practicing law. I'm not a lawyer. My interpretation	08:45:24
21	Q. Do you know what that mixture is?		21	with expert in patent law would be somebody who	
22	A. It's very -- best of my memory, it's very		22	practices law.	
23	slightly in favor of plaintiffs.		23	Q. You're not that person; right?	
24	Q. 55?		24	A. I don't practice law.	
25	A. 55 percent, something like that. It's pretty	08:42:51	25	Q. You're not that person, are you? You're not an	08:45:39
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<p>1 expert in patent law; right?</p> <p>2 A. By a doubt it's not just offered, no.</p> <p>3 MR. PEELER: Objection.</p> <p>4 BY MR. HOGAN:</p> <p>5 Q. You've taught classes -- I assume you've taught 08:45:50</p> <p>6 classes regarding plastics manufacturing?</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever taught any classes specifically</p> <p>9 directed to over-the-counter medical devices?</p> <p>10 A. We -- our design program does not have classes 08:46:04</p> <p>11 devoted to specific types of products, nor, for that</p> <p>12 matter, do any of the other industrial design programs</p> <p>13 in the United States, that I'm aware of, except for</p> <p>14 three that I'm aware of that offer specialized classes</p> <p>15 in transportation design. 08:46:26</p> <p>16 But aside from that, our classes, our studio</p> <p>17 classes, are typical in that we do not teach how to</p> <p>18 design specific categories of products, but how to</p> <p>19 design products in general.</p> <p>20 Q. Okay. Would it be fair to say, then, that if I 08:46:47</p> <p>21 could try to recap the three reaches or practice areas</p> <p>22 of your educational career -- and this is just from</p> <p>23 Wikipedia -- your three main areas are interdisciplinary</p> <p>24 design, user focused design, and culturally informed</p> <p>25 design. Is that fair? 08:47:17</p> <p style="text-align: right;">Page 14</p>	<p>1 things.</p> <p>2 Q. Okay. What's user focused design?</p> <p>3 A. User focused design is focusing on a person who</p> <p>4 is using the product. And it's -- the goal is to make</p> <p>5 that interaction between the user and the product 08:49:05</p> <p>6 seamless, to avoid confusion, to minimize the misuse of</p> <p>7 the product. And another part of it is to make the</p> <p>8 product pleasurable to use.</p> <p>9 Q. Did you do anything to prepare for today's</p> <p>10 deposition? 08:49:41</p> <p>11 A. I reviewed the patent. I reviewed -- the patent</p> <p>12 at issue. I reviewed -- rereviewed the file history of</p> <p>13 the patent. I reviewed all of the prior art, patents</p> <p>14 listed on the patent at issue. And I've reviewed the</p> <p>15 documents that have been shared between both parties, 08:50:07</p> <p>16 that have been made available to me.</p> <p>17 Q. What are those documents?</p> <p>18 A. I have a list here of all the documents that I've</p> <p>19 reviewed.</p> <p>20 Q. Okay. 08:50:20</p> <p>21 A. Want me to read it?</p> <p>22 MR. HOGAN: I would like that produced. We</p> <p>23 don't have a copy of that.</p> <p>24 MR. PEELER: It's what he just said. But</p> <p>25 you can mark it, if you want. 08:50:28</p> <p style="text-align: right;">Page 16</p>
<p>1 A. Ask me that again, please.</p> <p>2 Q. Sure. So I don't have a document for this, but</p> <p>3 this is information I'm aware of. You have three main</p> <p>4 research or practice areas when you were actively -- 08:47:29</p> <p>5 before you retired. And I understand those to be</p> <p>6 interdisciplinary design, user focused design, and</p> <p>7 culturally informed design. Is that fair?</p> <p>8 A. It includes those; it included those aspects,</p> <p>9 yes.</p> <p>10 Q. And others? 08:47:42</p> <p>11 A. Yes.</p> <p>12 Q. What others?</p> <p>13 A. Well, if I'm -- now, are we speaking</p> <p>14 educationally, or in my practice as a designer?</p> <p>15 Q. Both. 08:47:58</p> <p>16 A. It really depends on what the project is. The</p> <p>17 project can vary in complexity from a very simple</p> <p>18 product, like designing a screwdriver, to designing</p> <p>19 something much more complex, like a -- an automated</p> <p>20 prescription dispensing machine that goes out and picks 08:48:23</p> <p>21 and counts 600 oral solid prescriptions, packages them</p> <p>22 in, and verifies their authenticity, and prints a label</p> <p>23 and puts it on it. So those are kind of two extremes.</p> <p>24 Depending on what the category of product is and the</p> <p>25 complexity of product, it may include a lot of different 08:48:46</p> <p style="text-align: right;">Page 15</p>	<p>1 THE WITNESS: I just prepared this</p> <p>2 yesterday.</p> <p>3 MR. HOGAN: For the record, Mr. Kemnitzer</p> <p>4 has provided a declaration in support of plaintiff's</p> <p>5 claim construction, opening brief in this case. The 08:50:47</p> <p>6 materials considered, none is identified. Not none of</p> <p>7 it. On the declaration it identifies a patent file</p> <p>8 history, and nothing more.</p> <p>9 MR. PEELER: The stuff on the list is in the</p> <p>10 patent file history. 08:51:01</p> <p>11 MR. HOGAN: Not all of it is, Charlie.</p> <p>12 Dictionary definitions were received this morning, the</p> <p>13 joint claim construction statement.</p> <p>14 Do you just have one copy of this?</p> <p>15 THE WITNESS: Yes. 08:51:22</p> <p>16 MR. PEELER: You can have it.</p> <p>17 MR. HOGAN: I can have it?</p> <p>18 MS. PALMBERG: He said this is the only</p> <p>19 copy.</p> <p>20 MR. HOGAN: I'll make this Exhibit 1. 08:51:30</p> <p>21 (Exhibit No. K-1 was marked for</p> <p>22 identification.)</p> <p>23 BY MR. HOGAN:</p> <p>24 Q. I'm going to keep this here and come back to</p> <p>25 this. 08:52:15</p> <p style="text-align: right;">Page 17</p>

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<p>1 Okay. So if I understand you correctly, you</p> <p>2 reviewed everything that's listed on this document which</p> <p>3 has now been labeled Exhibit 1.</p> <p>4 We'll call this Kemnitzer 1. I'm going to</p> <p>5 abbreviate it K-1, if that's okay, Charlie? 08:52:29</p> <p>6 MR. PEELER: Yes, fine with me.</p> <p>7 BY MR. HOGAN:</p> <p>8 Q. Okay. I'll ask that again. If I understand your</p> <p>9 testimony correctly, you've reviewed all the documents</p> <p>10 that are listed in Exhibit Kemnitzer 1; right? 08:52:41</p> <p>11 A. Uh-huh.</p> <p>12 Q. Okay.</p> <p>13 MR. PEELER: Ron, you've got to answer with</p> <p>14 a yes or no as opposed to a shake of the head.</p> <p>15 THE WITNESS: I'm sorry. In response to the 08:52:51</p> <p>16 subpoena copy that I received, it instructed me to</p> <p>17 provide a list of all the materials that I reviewed</p> <p>18 during the course of my involvement in this case. And</p> <p>19 so I prepared this list last night, going through all of</p> <p>20 the records that I had, and to the best of my knowledge, 08:53:11</p> <p>21 this is complete.</p> <p>22 BY MR. HOGAN:</p> <p>23 Q. Okay. I appreciate that. The subpoena, which</p> <p>24 I'm going to show you in a second, actually asked for</p> <p>25 production of documents, not just a list. Did your 08:53:21</p> <p style="text-align: right;">Page 18</p>	<p>1 A. -- of last year.</p> <p>2 Q. -- December 2014 -- I'm not saying you should</p> <p>3 give me the exact date for each document; I doubt you'll</p> <p>4 remember off the top of your head. But roughly from the</p> <p>5 time frame spanning from December 2014 to when? 08:54:45</p> <p>6 A. To this past week.</p> <p>7 Q. Say March 23rd? Is that Monday? Yes, give or</p> <p>8 take. Could it be to March 23rd?</p> <p>9 A. Yes.</p> <p>10 Q. What did he provide you this week? 08:55:04</p> <p>11 A. I think the last document I received was a copy</p> <p>12 of my final declaration.</p> <p>13 Q. Okay. Did you not have it before that time?</p> <p>14 A. I did, but he confirmed that that was the</p> <p>15 declaration that was submitted. 08:55:29</p> <p>16 Q. I don't know if you know this. We received some</p> <p>17 documents this morning from Mr. Peeler, dictionary</p> <p>18 definitions from a dictionary from 1960.</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware of those? 08:55:41</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what the definitions were?</p> <p>23 A. Yes. They're on the list. May I refer to it?</p> <p>24 Those were definitions of base, cavity, and</p> <p>25 hollow, and also channel. 08:55:53</p> <p style="text-align: right;">Page 20</p>
<p>1 attorney ask for a list? If he did, that's different.</p> <p>2 A. My attorney suggested that I prepare this --</p> <p>3 MR. PEELER: Hold on, hold on. Don't say</p> <p>4 what I suggested or not. But I think your testimony is</p> <p>5 clear as to what you looked at. 08:53:37</p> <p>6 THE WITNESS: All right.</p> <p>7 BY MR. HOGAN:</p> <p>8 Q. In preparing this list, what records did you go</p> <p>9 through and review? How did you come up with this list?</p> <p>10 A. All the files on my computer, and the printed 08:53:47</p> <p>11 files that I have.</p> <p>12 Q. Were those materials provided to you by</p> <p>13 Mr. Peeler?</p> <p>14 A. Some of them are.</p> <p>15 Q. What about the ones that were not? 08:54:02</p> <p>16 A. I provided them.</p> <p>17 Q. You went out and found them?</p> <p>18 A. Yes.</p> <p>19 Q. Yourself?</p> <p>20 A. Yes. 08:54:10</p> <p>21 Q. When did you -- when were these materials</p> <p>22 provided to you by Mr. Peeler?</p> <p>23 A. Over a period of time from my engagement in the</p> <p>24 case, which was roughly December --</p> <p>25 Q. So from -- 08:54:32</p> <p style="text-align: right;">Page 19</p>	<p>1 Q. How did those definitions come to be? Who found</p> <p>2 those?</p> <p>3 A. I found base, cavity, and hollow.</p> <p>4 Q. Why were you looking for them?</p> <p>5 A. Because they were -- definitions of those terms 08:56:07</p> <p>6 were discussed in the claim construction documents, and</p> <p>7 I was looking at them.</p> <p>8 Q. You found them yourself -- not found by</p> <p>9 Mr. Peeler, you did it yourself; correct?</p> <p>10 A. Yes. 08:56:30</p> <p>11 Q. When did you do that?</p> <p>12 A. I don't know the dates. Somewhere in that window</p> <p>13 between December and now.</p> <p>14 Q. Was it closer to now or closer to December?</p> <p>15 A. I don't know. 08:56:41</p> <p>16 Q. You couldn't tell me if it was say, February?</p> <p>17 Was it recently or was it a month ago?</p> <p>18 A. I couldn't tell you reliably that it was</p> <p>19 February.</p> <p>20 Q. Can you give me your best recollection? 08:56:53</p> <p>21 A. Between December and now.</p> <p>22 Q. Okay. We'll come back to the definitions</p> <p>23 themselves specifically, in a little bit.</p> <p>24 Are you aware that we also received a new</p> <p>25 proposed claim construction this morning from 08:57:10</p> <p style="text-align: right;">Page 21</p>

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1	Mr. Peeler?		1	THE WITNESS: Change the question.	
2	A. Yes.		2	BY MR. HOGAN:	
3	Q. Did you speak with him about that construction?		3	Q. Let me ask it again. If you don't understand,	
4	A. Did I what?		4	say, "I don't understand," and I'll ask the question	
5	Q. Speak with him about that construction?	08:57:19	5	again. Okay?	08:59:23
6	MR. PEELER: Just answer yes or no.		6	So you testified -- let me back up.	
7	THE WITNESS: Yes.		7	We received, this morning, four definitions	
8	BY MR. HOGAN:		8	received from Mr. Peeler that we didn't have before;	
9	Q. Was that construction -- was that new		9	right? I'm telling you that's the case. These	
10	construction your idea?	08:57:30	10	definitions are not referenced in your declaration;	08:59:36
11	A. No.		11	correct?	
12	Q. Do you know whose idea it was?		12	A. I'd have to refer back to my declaration to see	
13	A. Yes.		13	that.	
14	Q. Whose?		14	Q. Do you recall being provided these definitions	
15	A. It was both of us.	08:57:43	15	along with your declaration?	08:59:48
16	Q. How did that idea come to be?		16	A. No, I don't.	
17	MR. PEELER: Hold on. If you want to ask		17	Q. I have your declaration here, which we'll look	
18	him about the construction and what his opinions are,		18	at. I'll represent to you you did not provide them.	
19	that's one thing. But to ask him about collaboration		19	This is the first we saw these definitions, this	
20	that he and I have had is impermissible, just like it	08:58:00	20	morning. Okay?	09:00:00
21	would be if I was asking your expert.		21	So what I'd like to know is, did you rely on	
22	MR. HOGAN: Do you have an objection?		22	these definitions specifically in forming your opinions	
23	You're using a speech to define the record, Charlie.		23	as written down, expressed in your declaration in this	
24	MR. PEELER: Yes, I object to that question.		24	case.	
25	MR. HOGAN: What's the objection?	08:58:13	25	A. Yes.	09:00:13
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1	MR. PEELER: Work product.		1	Q. You did.	
2	MR. HOGAN: It's not work product. If he		2	And for the record, we never had any notice	
3	was involved, it's not work product.		3	of those definitions in your declaration. I think	
4	THE WITNESS: Mike, read Rule 26. It's		4	that's clear from the record.	
5	clear.	08:58:28	5	While we're still on the questioning --	09:00:35
6	MR. HOGAN: I have. I'm not sure you have,		6	we're going to come back to this, because we have a	
7	Charlie, based on the course of this case so far.		7	claim term to talk about. We'll come back to this.	
8	MR. PEELER: I'm objecting to that.		8	(Exhibit No. K-2 was marked for	
9	MR. HOGAN: Are you done?		9	identification.)	
10	MR. PEELER: That's my objection, yeah.	08:58:30	10	BY MR. HOGAN:	09:01:01
11	BY MR. HOGAN:		11	Q. I'm handing you what's been marked K-2. Take a	
12	Q. Of those definitions, which did you find		12	look at it, sir, let me know, do you recognize it?	
13	yourself? All three of them?		13	A. Yes, I do recognize this.	
14	A. There's four of them.		14	Q. You received that; correct?	
15	Q. Base, cavity, hollow, which else?	08:58:37	15	A. Yes.	09:02:22
16	A. Base, cavity, hollow, I found.		16	MR. PEELER: Let me just note for the record	
17	Q. What's the fourth? Channel.		17	that we never waived proper service of it.	
18	So these definitions, did you rely on these		18	BY MR. HOGAN:	
19	definitions when you wrote your declaration that was		19	Q. You've seen it; correct?	
20	provided on March 13th.	08:59:00	20	A. Yes.	09:02:31
21	A. Yes, I considered them.		21	Q. When is the first time you saw it?	
22	Q. You did? These definitions that you provided to		22	A. I believe it was earlier this week.	
23	us this morning?		23	Q. Earlier this week. Am I correct in	
24	MR. PEELER: I sent them to him this		24	understanding, sir, you produced no documents in	
25	morning.	08:59:16	25	response to the subpoena; right?	09:02:44
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<p>1 A. No.</p> <p>2 Q. No. Do you plan on producing documents in</p> <p>3 response to the subpoena?</p> <p>4 MR. PEELER: We have identified the</p> <p>5 documents. 09:03:05</p> <p>6 MR. HOGAN: I didn't ask you a question,</p> <p>7 Charlie.</p> <p>8 I asked you a question, sir.</p> <p>9 MR. PEELER: I know, but --</p> <p>10 MR. HOGAN: Do you have an objection or are 09:03:11</p> <p>11 you just going to keep talking?</p> <p>12 MR. PEELER: I'm going to talk and object.</p> <p>13 MR. HOGAN: You might not know this,</p> <p>14 Charlie. In federal court you object -- I ask</p> <p>15 questions, he answers. You object to form or privilege. 09:03:21</p> <p>16 MR. PEELER: I asked you about that earlier</p> <p>17 and you wouldn't tell me, so...</p> <p>18 MR. HOGAN: I didn't agree with your</p> <p>19 characterization of Rule 26, which is ridiculous. So</p> <p>20 I'd like you to withhold the commentary. If you have an 09:03:31</p> <p>21 objection, make it; if you don't, then don't make an</p> <p>22 objection. Don't say anything. Okay? Thank you.</p> <p>23 BY MR. HOGAN:</p> <p>24 Q. Sir?</p> <p>25 A. What. 09:03:40</p> <p style="text-align: right;">Page 26</p>	<p>1 MR. HOGAN: That doesn't have to do with the</p> <p>2 question.</p> <p>3 BY MR. HOGAN:</p> <p>4 Q. Please answer the question, sir.</p> <p>5 A. I provided this document. 09:04:39</p> <p>6 Q. This document listing documents you reviewed;</p> <p>7 correct?</p> <p>8 A. Have I reviewed that document?</p> <p>9 Q. You provided this list which identifies documents</p> <p>10 you reviewed; correct? 09:04:52</p> <p>11 A. Yes.</p> <p>12 Q. You produced, yourself, none of these documents</p> <p>13 in this case; correct?</p> <p>14 A. Could you define what that means, that I've</p> <p>15 not... 09:05:01</p> <p>16 Q. I think I have the answer.</p> <p>17 I think you said a minute ago that you</p> <p>18 worked as an expert witness; correct.</p> <p>19 A. Yes.</p> <p>20 Q. And you worked in -- expert witness in 09:05:24</p> <p>21 litigation; correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. You have a personal website, do you not,</p> <p>24 sir?</p> <p>25 A. Yes. 09:05:35</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. Do you plan on producing any documents in</p> <p>2 response to the subpoena?</p> <p>3 MR. PEELER: Objection. He has complied</p> <p>4 with the subpoena.</p> <p>5 BY MR. HOGAN: 09:03:50</p> <p>6 Q. Yes or no.</p> <p>7 A. I believe I have.</p> <p>8 Q. You produced documents?</p> <p>9 A. Yes.</p> <p>10 Q. Were they attached to your declaration? 09:03:54</p> <p>11 A. No.</p> <p>12 Q. They were not. Do you think Kemnitzer 1, this</p> <p>13 list, meets your obligation to produce documents</p> <p>14 pursuant to the subpoena? Is that what you think?</p> <p>15 MR. PEELER: Yes. 09:04:11</p> <p>16 THE WITNESS: I believe so.</p> <p>17 MR. HOGAN: Are you answering, Charlie, or</p> <p>18 is the witness going to answer? Object or be quiet,</p> <p>19 please.</p> <p>20 MR. PEELER: I'm going to object. 09:04:19</p> <p>21 MR. HOGAN: What's the objection?</p> <p>22 MR. PEELER: That you're badgering him, that</p> <p>23 you're mischaracterizing the state of the subpoena. I</p> <p>24 object to the service of the subpoena. In fact, it has</p> <p>25 not been served properly. Those are my objections. 09:04:29</p> <p style="text-align: right;">Page 27</p>	<p>1 (Exhibit No. K-3 was marked for</p> <p>2 identification.)</p> <p>3 BY MR. HOGAN:</p> <p>4 Q. That website identifies you as a design patent</p> <p>5 and trade dress expert witness; right? 09:06:25</p> <p>6 A. Yes.</p> <p>7 Q. Is the information on that website up to date?</p> <p>8 A. I believe so.</p> <p>9 Q. Is it missing any representations or any</p> <p>10 consulting you've done? 09:06:46</p> <p>11 A. I believe that -- my answer to that is to the</p> <p>12 best of my knowledge, it covers all of it.</p> <p>13 Q. Okay. I hand you what's been marked K-3. I</p> <p>14 would represent to you this is a printout of your</p> <p>15 personal website. Can you flip through it and confirm 09:07:25</p> <p>16 that? Let me know when you're done.</p> <p>17 (Brief pause.)</p> <p>18 THE WITNESS: I'm done.</p> <p>19 BY MR. HOGAN:</p> <p>20 Q. Do you agree with me, sir, that that's a printout 09:08:32</p> <p>21 of your personal website?</p> <p>22 A. It appears to be.</p> <p>23 Q. Okay. I would represent that that's the way it's</p> <p>24 supposed to be. That's what we tried to do, anyway.</p> <p>25 You can see down in the corner, that's your URL address 09:08:43</p> <p style="text-align: right;">Page 29</p>

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<p>1 in the left-hand corner, just so I'm not giving you</p> <p>2 something that you're not already aware of.</p> <p>3 Would you -- so as we had mentioned a moment ago,</p> <p>4 across the top of every -- not every page, but the main</p> <p>5 pages, Ronald Kemnitzer, design patent and trade dress 09:09:00</p> <p>6 expert witness; right?</p> <p>7 A. Yes.</p> <p>8 Q. Would you please turn to the one, two, three,</p> <p>9 fourth page in, bottom right-hand corner, there's 1/6</p> <p>10 that's listed there. Fourth page in. One more, I 09:09:13</p> <p>11 think. That's it.</p> <p>12 Okay. This says litigation support</p> <p>13 experience about a third of the way down. See that?</p> <p>14 A. Uh-huh.</p> <p>15 Q. It says "my client," underlined, in parens. See 09:09:33</p> <p>16 that?</p> <p>17 A. Uh-huh.</p> <p>18 Q. This is a listing of the representation that</p> <p>19 you've done? 09:09:39</p> <p>20 A. Yes.</p> <p>21 Q. That's probably wrong. Let me try this way.</p> <p>22 This is a list of the cases you've been an expert</p> <p>23 witness on; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. There's several here. I'm going to go 09:09:50</p> <p style="text-align: right;">Page 30</p>	<p>1 Q. Spokes in the design?</p> <p>2 A. The design from a utilitarian point of view. One</p> <p>3 of the issues was that it was obvious to a designer that</p> <p>4 it could have been produced, and I opined on how</p> <p>5 complicated of a process it was and how unique the 09:11:16</p> <p>6 solution was.</p> <p>7 Q. Okay. Do you recall what the -- so you said -- I</p> <p>8 think you said the subject matter was a molded rocking</p> <p>9 chair.</p> <p>10 A. Yes. 09:11:29</p> <p>11 Q. Okay. Next one, April 12th, 2011. See that one?</p> <p>12 A. Yes.</p> <p>13 Q. Design patent infringement?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Next one, July 11, 2011, design patent 09:11:41</p> <p>16 infringement?</p> <p>17 A. Yes.</p> <p>18 Q. Next one, March 17th, 2012, design patent</p> <p>19 infringement? 09:11:53</p> <p>20 A. Yes.</p> <p>21 Q. Next one, August 15th, 2012, design patent</p> <p>22 infringement? Next one, October 4th, 2012, design</p> <p>23 patent infringement?</p> <p>24 A. Yes.</p> <p>25 Q. Next one down, December 21st, 2012, design patent 09:12:05</p> <p style="text-align: right;">Page 32</p>
<p>1 through them quickly. I assume you're aware of them.</p> <p>2 The first one, October 1st, 2008, design</p> <p>3 patent infringement; right?</p> <p>4 A. Yes.</p> <p>5 Q. Second one, July 6th, 2009, it says case, appeal 09:09:57</p> <p>6 of denial of U.S. patent application. Provided written</p> <p>7 opinion/affidavit in support of appeal. See that?</p> <p>8 A. Yes.</p> <p>9 Q. Was that a design patent or utility patent?</p> <p>10 A. That was a utility patent. 09:10:14</p> <p>11 Q. Okay. And the outcome is?</p> <p>12 A. The patent was allowed.</p> <p>13 Q. The patent was allowed. Do you recall what</p> <p>14 technology that was directed to?</p> <p>15 A. By technology, are you referring to manufacturing 09:10:24</p> <p>16 process?</p> <p>17 Q. What was the subject matter of the patent?</p> <p>18 A. Subject matter of the patent was a molded rocking</p> <p>19 chair.</p> <p>20 Q. Molded rocking chair. What was your opinion at 09:10:39</p> <p>21 that date, of what the deal was?</p> <p>22 A. It dealt whether or not it was a unique and</p> <p>23 creative solution.</p> <p>24 Q. What, the design?</p> <p>25 A. The design. 09:10:57</p> <p style="text-align: right;">Page 31</p>	<p>1 infringement?</p> <p>2 A. This was Ethicon versus Covidien, and this</p> <p>3 actually involved a utility patent.</p> <p>4 Q. Are you looking at this one that says 12-21-2012? 09:12:26</p> <p>5 A. I'm looking at the one that says 11-8-12. You</p> <p>6 missed that.</p> <p>7 Q. I missed that. Beg your pardon. Back up. That</p> <p>8 was the next one in order.</p> <p>9 November 8th, 2012; right? Ethicon versus</p> <p>10 Covidien, design patent infringement. 09:12:38</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Beg your pardon.</p> <p>13 A. The case also involved infringement allegations</p> <p>14 for utility patents. And although I was arguing the</p> <p>15 issues involved in the design patent infringement, a 09:12:50</p> <p>16 large part of that argument was the corresponding</p> <p>17 utility patent.</p> <p>18 Q. Okay. You're saying that now?</p> <p>19 A. I just said that.</p> <p>20 Q. You did. It says here, in your experience, 09:13:08</p> <p>21 design patent infringement; correct?</p> <p>22 A. Right. That was my role in that overall case.</p> <p>23 Q. Okay. Let's go to the next one, then. December</p> <p>24 21st, 2012, I guess, that's Oakley?</p> <p>25 A. Yes. 09:13:20</p> <p style="text-align: right;">Page 33</p>

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<p>1 Q. Versus Hire Order, design patent infringement?</p> <p>2 A. Yes.</p> <p>3 Q. Next one is April 23rd, 2013, design patent</p> <p>4 infringement; right?</p> <p>5 A. Yes. 09:13:31</p> <p>6 Q. Let's see. Next page there's several more.</p> <p>7 Looks like you have about 14 here, so I'll just keep</p> <p>8 going.</p> <p>9 August 30th, 2013, design patent</p> <p>10 infringement; right? 09:13:42</p> <p>11 A. Yes.</p> <p>12 Q. September 28th, next one, 2013, design patent and</p> <p>13 trade dress infringement; right?</p> <p>14 A. Sorry, which one are we on now?</p> <p>15 Q. September 28th, 2013. 09:13:56</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Next one, June 20th, 2014, design patent</p> <p>18 infringement?</p> <p>19 A. Yes.</p> <p>20 Q. And then the last one listed here is July 8th, 09:14:06</p> <p>21 2014. It's also design patent infringement; right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Backing up for a second, we talked a</p> <p>24 minute ago about the representation you had. The second</p> <p>25 one listed here on this document, on July 6th, 2009, 09:14:25</p> <p style="text-align: right;">Page 34</p>	<p>1 my website with.</p> <p>2 Q. Okay.</p> <p>3 A. One of them is this case.</p> <p>4 Q. Okay, this case.</p> <p>5 A. And there is another case, DDS versus -- I can't 09:15:50</p> <p>6 remember the name of the plaintiff, but that's also a</p> <p>7 utility patent case.</p> <p>8 Q. What are you doing in that case? What's your</p> <p>9 role as a consultant in that case?</p> <p>10 A. My role is to opine on infringement. 09:16:08</p> <p>11 Q. Of a utility patent?</p> <p>12 A. Of a utility patent.</p> <p>13 Q. Have you provided an affidavit in that case?</p> <p>14 A. It also includes trade dress.</p> <p>15 Q. Trade dress, so utility plus trade dress. Have 09:16:22</p> <p>16 you provided a declaration in that case?</p> <p>17 A. Yes.</p> <p>18 Q. You have.</p> <p>19 Have you been deposed in that case?</p> <p>20 A. No. 09:16:31</p> <p>21 Q. Do you know what court that's pending in?</p> <p>22 A. No, I don't. I can't recall.</p> <p>23 Q. Can you give me like a state? California? New</p> <p>24 York? New Jersey?</p> <p>25 A. I can't recall right now. 09:16:54</p> <p style="text-align: right;">Page 36</p>
<p>1 that was the appeal of a U.S. patent application. You</p> <p>2 provided the written opinion affidavit in support of</p> <p>3 appeal, we talked about a second ago, the molded rocking</p> <p>4 chair; right?</p> <p>5 A. Yes. 09:14:39</p> <p>6 Q. Did you construe claims for purposes of that?</p> <p>7 A. No.</p> <p>8 Q. You argued that the design was not obvious and</p> <p>9 essential then; right?</p> <p>10 A. Yes. 09:14:54</p> <p>11 Q. For the rocking chair case that we were just</p> <p>12 discussing here, do you remember the name of the</p> <p>13 inventor?</p> <p>14 A. Yes. Cooper Woodring.</p> <p>15 Q. Cooper Woodring. Can you spell that? 09:15:09</p> <p>16 A. W-o-o-d-r-i-n-g.</p> <p>17 Q. Thank you.</p> <p>18 A. His name is listed.</p> <p>19 Q. Is it there? I beg your pardon, I just missed</p> <p>20 it. 09:15:30</p> <p>21 A. May I make a correction?</p> <p>22 Q. Sure.</p> <p>23 A. You asked if this was a full and complete</p> <p>24 listing, and I said to the best of my knowledge. But</p> <p>25 there are two cases recently that I have not updated in 09:15:38</p> <p style="text-align: right;">Page 35</p>	<p>1 Q. If you recall, would you tell me at some point</p> <p>2 today?</p> <p>3 A. Yeah.</p> <p>4 Q. Who are the lawyers in that case? Do you know</p> <p>5 the -- who are you working with, I guess? 09:17:03</p> <p>6 A. I'm having a blank moment.</p> <p>7 MR. PEELER: If it comes to you, you can</p> <p>8 supply it later.</p> <p>9 THE WITNESS: If it comes to me I'll be</p> <p>10 happy to give you the name. I'm not evading your 09:17:25</p> <p>11 question; it slips my mind right now.</p> <p>12 BY MR. HOGAN:</p> <p>13 Q. I understand. No problem.</p> <p>14 A. Then there was a prior case to this, which was</p> <p>15 several years prior to the first case listed, which 09:17:36</p> <p>16 involved Nike, and that was a utility patent case.</p> <p>17 Q. Who did you consult with?</p> <p>18 A. I can't remember that.</p> <p>19 Q. Was it Nike?</p> <p>20 A. Nike was my client, was the company I was 09:17:53</p> <p>21 representing, yes.</p> <p>22 Q. Utility patent. Do you recall what your role</p> <p>23 was?</p> <p>24 A. My role was to -- it was an injury claim case,</p> <p>25 and my role was to opine on whether or not the claims of 09:18:18</p> <p style="text-align: right;">Page 37</p>

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<p>1 the patent were a cause of the injury.</p> <p>2 Q. Was it patent infringement?</p> <p>3 A. No.</p> <p>4 Q. Okay. Patent injury. I have to confess, I've</p> <p>5 never heard that before. 09:18:44</p> <p>6 A. I've been -- I received -- it's not on my list</p> <p>7 because I've been advised that -- I've been advised that</p> <p>8 I should only show cases from the previous four years,</p> <p>9 and others say I should show all of my cases, so I'm</p> <p>10 just trying to keep it within a reasonable amount of 09:19:08</p> <p>11 listings.</p> <p>12 Q. I understand.</p> <p>13 I don't know what patent injury is. It was</p> <p>14 not patent infringement?</p> <p>15 A. No, it was a liability. It was personal injury. 09:19:19</p> <p>16 Q. Okay.</p> <p>17 A. And the claim was that it was because of the way</p> <p>18 the product was designed.</p> <p>19 Q. Okay, so -- go ahead.</p> <p>20 A. Yeah. So I had to do -- examine all of the 09:19:31</p> <p>21 claims and translate those to the injury, as to whether</p> <p>22 or not they could have caused it.</p> <p>23 Q. The injury to the person?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Over the course of your career, how many 09:19:51</p> <p>Page 38</p>	<p>1 disqualified as an expert in any case, have you?</p> <p>2 A. No.</p> <p>3 Q. Have you ever had any part of one of your expert</p> <p>4 declarations or opinions struck by a court?</p> <p>5 A. No. 09:21:33</p> <p>6 Q. Have you ever been prevented from testifying in a</p> <p>7 case or proceeding for any reason?</p> <p>8 A. No.</p> <p>9 Q. You're aware, are you not, sir, that there's</p> <p>10 different standards between infringement of a design 09:21:51</p> <p>11 patent and a utility patent; right?</p> <p>12 A. Yes.</p> <p>13 Q. What's the standard for a design patent?</p> <p>14 MR. PEELER: Objection that you're asking</p> <p>15 him for a legal conclusion. 09:22:00</p> <p>16 BY MR. HOGAN:</p> <p>17 Q. You can answer. Go ahead.</p> <p>18 A. For infringement?</p> <p>19 Q. For a design patent, yes.</p> <p>20 A. For infringement. That an ordinary observer 09:22:10</p> <p>21 would purchase a product, thinking it would be the other</p> <p>22 product, the infringing product, and in that case the</p> <p>23 product is infringing.</p> <p>24 Q. Ordinary observer test.</p> <p>25 You're familiar with Egyptian Goddess, I 09:22:30</p> <p>Page 40</p>
<p>1 cases, ball park, have you worked in as an expert</p> <p>2 witness?</p> <p>3 Let me back up. I understand that not all</p> <p>4 your expert witness experience is listed on your</p> <p>5 personal website. There are probably more cases you 09:20:06</p> <p>6 worked on that aren't listed here; correct?</p> <p>7 A. One or two.</p> <p>8 Q. One or two. Okay.</p> <p>9 A. I think there was a case, probably 20 years ago,</p> <p>10 for -- it was a utility patent case involving a fishing 09:20:20</p> <p>11 reel.</p> <p>12 Q. Fishing reel.</p> <p>13 A. Yeah.</p> <p>14 Q. And did you opine on infringement or on the</p> <p>15 validity? 09:20:36</p> <p>16 A. It was a strange case. I wrote a report, but the</p> <p>17 report was -- did not have the structure or the kind</p> <p>18 of -- well, I just wrote a report and that was the end</p> <p>19 of it, and I never heard anything more about it. I was</p> <p>20 not deposed, not even advised of the outcome of the 09:20:58</p> <p>21 case, and I don't know that my report was even used.</p> <p>22 Q. Okay. Have you ever testified as an expert at</p> <p>23 trial?</p> <p>24 A. No.</p> <p>25 Q. So is it fair to say you've never been 09:21:19</p> <p>Page 39</p>	<p>1 assume; right?</p> <p>2 A. Yes.</p> <p>3 Q. We walked into that.</p> <p>4 Design patents don't have claims, do they?</p> <p>5 A. Yes, they do. 09:22:40</p> <p>6 Q. What do they say, typically?</p> <p>7 A. The ornamental appearance of.</p> <p>8 Q. I claim the ornamental appearance of picture X,</p> <p>9 picture Y, picture Z; right?</p> <p>10 A. Yes. 09:22:52</p> <p>11 Q. It's true, is it not, that typically in design</p> <p>12 patent cases, there is no claim construction; right?</p> <p>13 A. I can't answer that for certain. I think there</p> <p>14 was a period of time when there was written claim</p> <p>15 construction. 09:23:12</p> <p>16 Q. Did you ever provide one of those?</p> <p>17 A. No.</p> <p>18 Q. I understand, since --</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. Not to your knowledge. Beg your pardon. 09:23:20</p> <p>21 I understand, since Egyptian Goddess II from the</p> <p>22 federal circuit, the federal circuit ultimately</p> <p>23 discourages claim construction for design cases. Are</p> <p>24 you aware of that?</p> <p>25 A. Yes. 09:23:32</p> <p>Page 41</p>

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<p>1 Q. Since that time have you ever done a claim</p> <p>2 construction for a design patent?</p> <p>3 A. No.</p> <p>4 Q. Okay. And utility patent claims have actual</p> <p>5 claims to the composition or the method or the 09:23:44</p> <p>6 structures disclosed in the patent; correct?</p> <p>7 A. Say that again, please.</p> <p>8 Q. Utility patents have claims that claim the</p> <p>9 structure of the invented subject matter, for example;</p> <p>10 right? 09:24:04</p> <p>11 A. They can claim the structure.</p> <p>12 Q. Right. The point is utility patent claims</p> <p>13 actually are more than just saying, "I claim the</p> <p>14 pictures shown in A, B and C." They're actual</p> <p>15 structures, they can be methods, compositions, things 09:24:16</p> <p>16 like that; right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know the standards of claim</p> <p>19 construction in a utility patent? Let me try that</p> <p>20 again. Back to the question. 09:24:37</p> <p>21 Do you know what the standard is for</p> <p>22 construing the claims of a utility patent?</p> <p>23 A. No, I don't know what you're referring to.</p> <p>24 Q. Okay.</p> <p>25 A. I know there's a process of construing the 09:24:50</p> <p style="text-align: right;">Page 42</p>	<p>1 Q. I want to look real quick, on top of page 1 of 11</p> <p>2 of Exhibit K-5, that's where your professional</p> <p>3 background starts.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Your professional background has got 1 through -- 09:27:54</p> <p>6 some numbered paragraphs there, 1 through 8. See that?</p> <p>7 A. Yes.</p> <p>8 Q. This professional background does not appear in</p> <p>9 this form in your personal website. Did you prepare</p> <p>10 this professional background for this case? 09:28:17</p> <p>11 A. My website is a marketing instrument, and so it's</p> <p>12 brief, it's to the point, and hits highlights that I</p> <p>13 think would be of interest to potential clients.</p> <p>14 So this is a more complete listing of,</p> <p>15 particularly of things that I think are pertinent to 09:28:49</p> <p>16 this case.</p> <p>17 Q. I understand. What I'm asking is a different</p> <p>18 question, though. This professional background, these</p> <p>19 paragraphs 1 through 8, does this always accompany your</p> <p>20 CV when you provide a declaration in a patent case, or 09:29:02</p> <p>21 is it just for this case?</p> <p>22 A. I can't say that I always do it exactly the same</p> <p>23 way.</p> <p>24 Q. When you provide a CV along with your</p> <p>25 declarations, when you consult and you're an expert 09:29:19</p> <p style="text-align: right;">Page 44</p>
<p>1 claims, and it's a conversation between both parties.</p> <p>2 Q. Okay.</p> <p>3 (Exhibits Nos. K-4 and K-5 were marked for</p> <p>4 identification.)</p> <p>5 BY MR. HOGAN: 09:25:01</p> <p>6 Q. I'm handing you what's been marked Exhibits K-4</p> <p>7 and K-5, in that order.</p> <p>8 K-4 is plaintiff's opening claim</p> <p>9 construction brief in this case; correct?</p> <p>10 A. Yes. 09:26:43</p> <p>11 Q. K-5 is Exhibit A to that opening brief, to make</p> <p>12 it easier to refer to Exhibit K-5. Okay?</p> <p>13 Take a look at -- I'm going to refer to K-5</p> <p>14 mainly, for the time being. K-5 is your declaration.</p> <p>15 And attached to your declaration is your -- it looks 09:26:57</p> <p>16 like some information, personal background, list of</p> <p>17 patents, CV, et cetera. Recognize that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you agree with me, sir, K-5 is the</p> <p>20 declaration you provided in this case for plaintiff's 09:27:13</p> <p>21 claim construction?</p> <p>22 A. Yes.</p> <p>23 Q. You also had, I think you said a minute ago,</p> <p>24 attached to the back of it as your CV?</p> <p>25 A. Uh-huh, yes. 09:27:27</p> <p style="text-align: right;">Page 43</p>	<p>1 witness on other cases for patent utility or design, you</p> <p>2 provide a professional background every time; right?</p> <p>3 A. No.</p> <p>4 Q. Why did you do it this time?</p> <p>5 A. I usually put this information in -- I don't 09:29:32</p> <p>6 always -- I'm not always required to file a declaration,</p> <p>7 so oftentimes I'm asked to provide a report. I include</p> <p>8 this within the report, so it's in the text of a report.</p> <p>9 Q. I see what you're saying. So sometimes this can</p> <p>10 be in the text of the report? 09:30:07</p> <p>11 A. Yes.</p> <p>12 Q. And when it's not in the text of the report, you</p> <p>13 provide it in this form --</p> <p>14 A. Yes.</p> <p>15 Q. -- along with your CV? 09:30:13</p> <p>16 A. Yes.</p> <p>17 Q. Let me try this. Whenever you act as an expert</p> <p>18 in a patent case, you supply professional background in</p> <p>19 one form or another, either like this as an attachment</p> <p>20 to your CV, or in the report itself? 09:30:23</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Does this format of special background, do</p> <p>23 you edit it? Does it change? Do you adjust it for</p> <p>24 cases, or does it stand every time, in either format we</p> <p>25 discussed? 09:30:40</p> <p style="text-align: right;">Page 45</p>

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<p>1 A. It's pretty much the same. My professional 2 background is pretty extensive, and I've designed a lot 3 of different categories and a lot of different types of 4 products. So if I'm engaged in a case that is more 5 technical, I may not include areas of experience that 6 are not pertinent to that. 09:31:08</p> <p>7 MR. HOGAN: Okay. Counsel, we ask for you 8 to provide to us a list of representations by the 9 witness, according to Rule 26. We don't have that yet. 10 We have not gotten that from you or the expert, so we'd 11 like that, please. 09:31:31</p> <p>12 MR. PEELER: Say that again, now? 13 MR. HOGAN: We'd like a list of 14 representations by the expert, according to Rule 26. We 15 have not received that from you or the expert so far. 09:31:42</p> <p>16 MR. PEELER: Okay. 17 MR. HOGAN: You never provided that to us, 18 so we're asking you for that. 19 MR. PEELER: Right. I guess I'm being a 20 little hesitant because I don't think that at this stage 21 of the litigation he has to prepare a report under the 22 requirements of Rule 26. So I think he probably will in 23 this case, and we'll comply with it. Are we saying the 24 same thing? 25 MR. HOGAN: No. Is it your contention that 09:32:09</p> <p style="text-align: right;">Page 46</p>	<p>1 Q. Did you write the text of the patent? 2 A. I don't recall. 3 Q. You have no patents that are directed to 4 over-the-counter medical devices, do you? 5 A. Yes, I do. 09:33:31 6 Q. Are they listed here? 7 MR. PEELER: I'm going to object to that 8 question as vague. 9 THE WITNESS: I'm sorry, take that back. 10 No, I don't have a patent for it. 09:33:52 11 BY MR. HOGAN: 12 Q. Okay. And you don't have a patent directed as a 13 reminder device, do you? 14 A. No. 15 Q. Keep that handy. We're going to go to Exhibit 5 09:34:01 16 in a few minutes. 17 (Exhibit No. K-6 was marked for 18 identification.) 19 BY MR. HOGAN: 20 Q. I'm handing you an exhibit that's been marked -- 09:34:29 21 hang on. I did a horrible sticker job. I'm going to 22 try to fix this. 23 I'm handing you an exhibit that's been marked 24 Exhibit K-6, with a proper stamp on it. Do you 25 recognize that document, sir? 09:35:03</p> <p style="text-align: right;">Page 48</p>
<p>1 his affidavit is not compliant with Rule 26? 2 MR. PEELER: No, I think his affidavit is in 3 support of this claim construction. 4 BY MR. HOGAN: 5 Q. So going back to your -- 09:32:25 6 MR. PEELER: Getting back to you, to 7 supplement what he said on his representations, I don't 8 have a problem with getting you that information in a 9 couple weeks. 10 MR. HOGAN: Thank you. I don't need it 11 tomorrow. 09:32:38 12 MR. PEELER: Yes, sure. 13 BY MR. HOGAN: 14 Q. Okay. Looking back at your CV here, this is the 15 CV part of K-5 we're talking about. Numbered paragraph 09:32:47 16 5, you list a number of patents. It says here: I'm the 17 inventor of the following patents. There's a bunch 18 there; right? 19 A. Yes. 20 Q. Certainly design patents and utility patents; 09:33:01 21 right? 22 A. Or utility patents. 23 Q. Okay. Did you draft any of these patents 24 yourself? 25 A. Could you explain that term? 09:33:17</p> <p style="text-align: right;">Page 47</p>	<p>1 A. Yes. 2 Q. What is it? 3 A. This is the patent at issue. 4 Q. In this lawsuit; correct? 5 A. Yes. 09:35:22 6 Q. I'm going to hand you another copy of that. It's 7 the exact same thing. We're going to look at the 8 figures and some things; I think it might be easier to 9 have two things to flip back and forth between, so you 10 can use whatever you want. It was just to expedite 09:35:34 11 things, make life a little easier, if that's okay with 12 everybody. 13 You want two? 14 MR. PEELER: I've got more than two. 15 MR. HOGAN: Don't think I was leaving you 16 out, Charlie. 09:35:45 17 MR. PEELER: No. 18 BY MR. HOGAN: 19 Q. When did you see the patent for the first time? 20 A. I saw the patent for the first time in, I 21 believe, December 2014. 09:35:52 22 Q. Who gave it to you? 23 A. I'm not sure of my recollection, whether I was 24 given a number or a file of the patent. I believe that 25 I looked the patent up. 09:36:23</p> <p style="text-align: right;">Page 49</p>

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<p>1 Q. Who did you get the number from?</p> <p>2 A. From counsel.</p> <p>3 Q. Okay. Have you read the patent?</p> <p>4 A. Yes.</p> <p>5 Q. How many times, roughly? 09:36:30</p> <p>6 A. 20.</p> <p>7 Q. 20. That's a lot.</p> <p>8 I think you used the word counsel a second</p> <p>9 ago. By counsel, do you mean Mr. Peeler?</p> <p>10 A. Yes. 09:37:13</p> <p>11 Q. Is there any other counsel you've worked with in</p> <p>12 this case?</p> <p>13 A. No.</p> <p>14 Q. The title of this, referring now to K-5 -- sorry,</p> <p>15 beg your pardon. 6. That's the 358 patent. If I refer 09:37:23</p> <p>16 to it as the 358 patent, is that fair, you'll know what</p> <p>17 I mean?</p> <p>18 A. Yes.</p> <p>19 Q. The title is method and device for recording</p> <p>20 periodic medicinal dosages; right? 09:37:36</p> <p>21 A. Yes.</p> <p>22 Q. It's a fairly straightforward sort of device;</p> <p>23 isn't it?</p> <p>24 A. Yes.</p> <p>25 Q. It's even kind of simple; right? 09:37:47</p> <p style="text-align: right;">Page 50</p>	<p>1 Q. The definitions?</p> <p>2 A. Yes.</p> <p>3 Q. Do you believe the definitions in the patents?</p> <p>4 A. Or the descriptions.</p> <p>5 Q. Descriptions in the patent? 09:39:42</p> <p>6 A. Descriptions, yes.</p> <p>7 Q. Okay. So you don't mean definitions in the</p> <p>8 patent, you mean descriptions in the patent; right?</p> <p>9 A. Yes.</p> <p>10 Q. Did you find anything in the patent claims 09:39:49</p> <p>11 confusing?</p> <p>12 A. I think the one -- well, yes.</p> <p>13 Q. You found things confusing?</p> <p>14 A. I found at least one thing confusing.</p> <p>15 Q. What was that? 09:40:02</p> <p>16 A. I think there were some terms that were -- two</p> <p>17 terms that I think created some initial confusion for</p> <p>18 me. It was channel and cavity.</p> <p>19 (Exhibit No. K-7 was marked for</p> <p>20 identification.) 09:40:36</p> <p>21 BY MR. HOGAN:</p> <p>22 Q. So you testified that the terms channel and</p> <p>23 cavity caused you some initial confusion. In your</p> <p>24 declaration, I believe you testified, you state that</p> <p>25 those terms have a plain, ordinary meaning; correct? 09:40:58</p> <p style="text-align: right;">Page 52</p>
<p>1 A. In the scheme of product design, yes.</p> <p>2 Q. Okay. When you read it, did you find anything</p> <p>3 confusing about it?</p> <p>4 A. By the fact that I read it 20 times suggests,</p> <p>5 correctly, that there's a lot of connections to be made 09:38:25</p> <p>6 between the text and the patent images. And so it</p> <p>7 required a lot of sifting through the information to</p> <p>8 really get a grasp on what was what.</p> <p>9 Q. As an expert witness, being diligent, you read a</p> <p>10 patent a few times, anyway; right? 09:38:57</p> <p>11 A. Yes.</p> <p>12 Q. In any case, you read the patent a number of</p> <p>13 times?</p> <p>14 A. Yes.</p> <p>15 Q. Is this patent any different from any other 09:39:03</p> <p>16 patent you've worked with in that regard?</p> <p>17 A. No.</p> <p>18 Q. You've read the claims of the 358 patent; right?</p> <p>19 A. Yes.</p> <p>20 Q. Did you understand them? 09:39:12</p> <p>21 A. Yes.</p> <p>22 Q. When you read those claims, did you find any</p> <p>23 ambiguity in those claim terms?</p> <p>24 A. There was -- I had some ambiguity between some of</p> <p>25 the definitions, which I worked through. 09:39:31</p> <p style="text-align: right;">Page 51</p>	<p>1 A. Yes.</p> <p>2 Q. But you were confused when you read them the</p> <p>3 first time?</p> <p>4 A. I was confused because both terms were used, and</p> <p>5 I -- my initial thought was that they were very similar 09:41:10</p> <p>6 terms, which prompted my checking the dictionary for the</p> <p>7 definitions, which is why those were on that list of</p> <p>8 materials that I researched.</p> <p>9 After reading those definitions, and looking</p> <p>10 very carefully at the use of those two terms, I can say 09:41:36</p> <p>11 that today I'm very confident of what their meaning is.</p> <p>12 Q. And just so we're clear, in your declaration,</p> <p>13 when you talk about the terms channel and cavity, you</p> <p>14 nowhere cite the dictionary definitions provided to us</p> <p>15 today in support of your interpretations; right? 09:41:59</p> <p>16 A. Can you say that again?</p> <p>17 Q. In your declaration, for the terms channel and</p> <p>18 cavity, you don't cite those dictionary definitions we</p> <p>19 received this morning, in support of your</p> <p>20 interpretations or your opinions, do you? 09:42:11</p> <p>21 A. No.</p> <p>22 Q. Why not?</p> <p>23 A. I looked at those definitions to clarify my</p> <p>24 understanding of the difference between the two.</p> <p>25 Q. So your confusion was between the two, not the 09:42:30</p> <p style="text-align: right;">Page 53</p>

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<p>1 meaning of the two -- of the terms specifically; is that</p> <p>2 correct?</p> <p>3 A. Right.</p> <p>4 Q. Were you very confident in your understanding of</p> <p>5 the term channel at the time you signed your 09:42:51</p> <p>6 declaration?</p> <p>7 A. Well, I was -- I still had some questions about</p> <p>8 it, but that was my best understanding of it at the time</p> <p>9 that I signed the declaration.</p> <p>10 Q. Has that understanding changed since then? 09:43:27</p> <p>11 A. Yes.</p> <p>12 Q. Why?</p> <p>13 A. By going back and thoroughly examining the patent</p> <p>14 language in conjunction with the illustrations. The</p> <p>15 term channel means, in my understanding as a designer, 09:43:48</p> <p>16 the terms channel and cavity can be used</p> <p>17 interchangeably. The difference between them is not</p> <p>18 significantly different. And so because of that, I had</p> <p>19 some questions about the terminology about them.</p> <p>20 Q. That occurred after you signed your declaration? 09:44:18</p> <p>21 A. I think, after I signed the declaration, that</p> <p>22 I've resolved that issue.</p> <p>23 Q. Did you resolve that of your own volition, or did</p> <p>24 somebody ask you to resolve that confusion?</p> <p>25 A. I solved that on my own. 09:44:35</p> <p style="text-align: right;">Page 54</p>	<p>1 particularly the illustrations.</p> <p>2 Q. And that was an event you had before you filed</p> <p>3 your declaration. It was not new evidence, was it?</p> <p>4 A. No.</p> <p>5 Q. I hand the witness what's been marked 09:46:43</p> <p>6 Exhibit K-7.</p> <p>7 I'm not going to ask you a lot of detailed</p> <p>8 questions about this. This is a document bearing Bates</p> <p>9 numbers P-280 to P-390. I'll just ask you to flip</p> <p>10 through it, sir, let me know if you recognize it. 09:47:06</p> <p>11 MR. PEELER: Can we take a quick break?</p> <p>12 MR. HOGAN: Let him answer the question and</p> <p>13 we'll go.</p> <p>14 MR. PEELER: You didn't ask him a question.</p> <p>15 MR. HOGAN: I asked him if he recognized it. 09:47:18</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. PEELER: Let's take a break.</p> <p>18 MR. HOGAN: Can we keep it short, less than</p> <p>19 10?</p> <p>20 MR. PEELER: How about three minutes. 09:47:26</p> <p>21 MR. HOGAN: Great.</p> <p>22 THE VIDEOGRAPHER: We're off the record at</p> <p>23 9:47.</p> <p>24 (A recess ensued.)</p> <p>25 THE VIDEOGRAPHER: We're back on the record 09:51:40</p> <p style="text-align: right;">Page 56</p>
<p>1 Q. When did it occur to you that you should solve</p> <p>2 that confusion?</p> <p>3 A. It's been an ongoing -- it's been an ongoing</p> <p>4 issue.</p> <p>5 Q. Do you intend to continue resolving or evolving 09:44:48</p> <p>6 your definitions in this case?</p> <p>7 A. Well, if new evidence is introduced that affects</p> <p>8 some of the decisions that I've made, I certainly may</p> <p>9 change my opinions. I reserve that right.</p> <p>10 Q. Do you? 09:45:10</p> <p>11 A. If new evidence is provided, yes.</p> <p>12 Q. And you'll change your opinions at any time, you</p> <p>13 could potentially; right?</p> <p>14 A. I wouldn't say at any time. I would say only if</p> <p>15 new evidence is produced that changes the facts of the 09:45:36</p> <p>16 case.</p> <p>17 Q. But with channel and cavity, you changed your</p> <p>18 mind, with no new facts coming to light; isn't that</p> <p>19 true?</p> <p>20 MR. PEELER: Object. 09:46:00</p> <p>21 BY MR. HOGAN:</p> <p>22 Q. You can answer.</p> <p>23 A. I have changed my mind about that, yes.</p> <p>24 Q. With no new facts coming to light; correct?</p> <p>25 A. I think, with a clear reading of the patent, and 09:46:18</p> <p style="text-align: right;">Page 55</p>	<p>1 at 9:51.</p> <p>2 BY MR. HOGAN:</p> <p>3 Q. Before we went on the break, I asked you, sir, if</p> <p>4 you recognized Exhibit K-7. Do you?</p> <p>5 A. Yes. 09:51:51</p> <p>6 Q. What is it?</p> <p>7 A. It's the file history of the patent at issue.</p> <p>8 Q. File history of the 358 patent?</p> <p>9 A. Yes.</p> <p>10 Q. You didn't reference it anywhere in your 09:52:01</p> <p>11 declaration.</p> <p>12 A. No.</p> <p>13 Q. So is it correct, sir, that this file history, in</p> <p>14 your view, has no impact at all on the claim</p> <p>15 construction in this case? 09:52:12</p> <p>16 MR. PEELER: I'm going to object that you're</p> <p>17 mischaracterizing his declaration.</p> <p>18 BY MR. HOGAN:</p> <p>19 Q. You can answer.</p> <p>20 A. You want a yes or no answer to that. Ask the 09:52:20</p> <p>21 question again.</p> <p>22 Q. Am I correct, sir, that the file history of the</p> <p>23 358 patent doesn't affect your opinions in this case</p> <p>24 about claim construction at all?</p> <p>25 A. No, you're not correct. 09:52:38</p> <p style="text-align: right;">Page 57</p>

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<p>1 Q. You didn't cite the file history anywhere in the 2 declaration, did you? 3 MR. PEELER: Objection. That 4 mischaracterizes his declaration. 5 BY MR. HOGAN: 09:52:53 6 Q. You can answer. 7 Let me try this way. I'll ask you another 8 question. I think, in paragraph 4 of your declaration, 9 you state that you've considered the patent file 10 history. We'll get your declaration in a second. Do 09:53:03 11 you remember that part? 12 A. Yes. 13 Q. In support of your actual construction, your 14 actual terms, there's no citation to file history, is 15 there? 09:53:17 16 MR. PEELER: Objection; mischaracterizes his 17 declaration. 18 BY MR. HOGAN: 19 Q. Do you recall? 20 A. When I took on the case, I reviewed all of these 09:53:22 21 materials, pretty much all of the ones that are on the 22 list, before I began my work on the case. 23 Q. I didn't ask you that. What I want to know is, 24 in your opinion, the declaration, the number of 25 paragraphs, there's no citations to file history in 09:53:36 Page 58</p>	<p>1 A. And after. Before and after. 2 Q. Can you tell me how many before, how many after? 3 A. I probably read it four or five times after. 4 Q. Do you know the name of the inventor of this 5 patent, Lisa Duer? 09:55:07 6 A. I know her name. 7 Q. Did you ever speak to her? 8 A. No. 9 Q. Did you ever meet her? 10 A. Say again, please. 09:55:11 11 Q. You never met her? 12 A. No. 13 Q. Never exchanged e-mails with her? 14 A. No. 15 Q. One second. Okay. Turn back, please, to 09:55:18 16 Exhibit K-6. That's the 358 patent. Do you have that 17 in front of you? 18 A. Yes. 19 Q. Do me a favor, please. The abstract section, see 20 that? 09:56:24 21 A. Yes. 22 Q. Read that to yourself; let me know when you're 23 done. 24 (Brief pause.) 25 THE WITNESS: Okay, I'm finished. 09:56:50 Page 60</p>
<p>1 support of your opinions, are there? 2 MR. PEELER: Objection. That 3 mischaracterizes his declaration. 4 BY MR. HOGAN: 5 Q. You can answer. 09:53:47 6 A. There are none that are cited. 7 Q. None cited. Thank you. 8 How many times did you read the file 9 history, sir? 10 A. I already answered that question. 09:53:57 11 Q. If I asked you again, I'm sorry. Let me have it 12 one more time. 13 A. Probably about 20. 14 Q. File history and patent, 20 times? 15 A. I'm sorry. You said file history? 09:54:05 16 Q. Yes. 17 A. File history, I've read the file history probably 18 four times. 19 Q. Okay. Who did you get it from? 20 A. From Mr. Peeler. 09:54:14 21 Q. You said earlier you think you read the patent, 22 the 358 patent in this case, about 20 times; right? 23 A. Yes. 24 Q. Was that before you signed your declaration on 25 March 13th? 09:54:30 Page 59</p>	<p>1 BY MR. HOGAN: 2 Q. Okay. I'm going to read parts of this. It 3 starts out: A dosage reminder device is disclosed. 4 A. Yes. 5 Q. It skips down a couple lines, it says: Each 09:56:59 6 slide indicates a first position for a dosage not taken, 7 a second position to indicate a dosage taken, or to a 8 third position to indicate no dosage. See that? 9 A. Yes, sir. 10 Q. Okay. Indicate to whom? Do you know who they're 09:57:10 11 referring to? 12 A. It would be indicated to the user. 13 Q. To the user. One of your areas of study and 14 specialty is user focused design; right? 15 A. Yes. 09:57:24 16 Q. Okay. Do you need to have a specialty in user 17 focused design to understand indicate means the user of 18 the device here? 19 A. I don't think so. 20 Q. Indicates to the user. So the user looks at the 09:57:39 21 device when sliding the slides, or trying to see whether 22 a dosage is taken or not taken; right? 23 A. Some users may look at it. 24 Q. Some may feel the Braille on the side? 25 A. Some people may be blind, some people may just 09:57:53 Page 61</p>

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<p>1 not be looking at it when they use it.</p> <p>2 Q. They could slide it, interact with it, but not</p> <p>3 look at it; correct?</p> <p>4 A. Correct.</p> <p>5 Q. Turn, please, to column 7, line 41. About 09:58:03</p> <p>6 line 41. It starts at: Each slide assembly. See that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Read to yourself, please, Line 41 to about</p> <p>9 lines -- in that paragraph, Line 47. Let me know when</p> <p>10 you're done, please. 09:58:34</p> <p>11 (Brief pause.)</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. HOGAN:</p> <p>14 Q. Okay. I'm going to read the first sentence:</p> <p>15 Each slide assembly, 200, is comprised of a slide base, 09:58:56</p> <p>16 210, a slide base lock, 220, a slide base channel, 230,</p> <p>17 a slide base channel surface, 240, and a finger button,</p> <p>18 250, period. See that?</p> <p>19 A. Yes.</p> <p>20 Q. In that sentence, this word of comprised, do you 09:59:11</p> <p>21 know what comprised or comprises mean in a patent,</p> <p>22 utility patent?</p> <p>23 A. Yes.</p> <p>24 Q. What's it mean?</p> <p>25 A. It means a group of. 09:59:21</p> <p style="text-align: right;">Page 62</p>	<p>1 very bottom. Line 66 or so of column 6, over to</p> <p>2 line 3 of column 7, read that to yourself, and let me</p> <p>3 know when you're done.</p> <p>4 (Brief pause.)</p> <p>5 THE WITNESS: Do you want me to read through 10:01:21</p> <p>6 the figures?</p> <p>7 BY MR. HOGAN:</p> <p>8 Q. No, just stop at line 3.</p> <p>9 This is basically saying -- it does say: The</p> <p>10 technology described herein, together with further 10:01:28</p> <p>11 advantages thereof, may best be understood by reference</p> <p>12 to the following description of the simplest form of the</p> <p>13 invention, taken in conjunction with the accompanying</p> <p>14 drawings in which -- and it lists Figures 1 through 5;</p> <p>15 is that right? 10:01:41</p> <p>16 A. Uh-huh, yes.</p> <p>17 Q. So the patent specifically refers to the figures</p> <p>18 in part of the description, doesn't it? In that passage</p> <p>19 we just looked at, it specifically refers to the</p> <p>20 figures; right? 10:01:56</p> <p>21 A. To what?</p> <p>22 Q. It specifically refers to the figures in the</p> <p>23 patent.</p> <p>24 MR. PEELER: Objection; vague.</p> <p>25 BY MR. HOGAN: 10:02:03</p> <p style="text-align: right;">Page 64</p>
<p>1 Q. Okay. Continuing on, the next sentence. Let's</p> <p>2 see here: The slide base channel surface may have one</p> <p>3 or more distinctive colors to reinforce if a dosage has</p> <p>4 been taken, e.g., red may show in the dosage taken 09:59:42</p> <p>5 position, and a green may show in the dosage not taken</p> <p>6 position, period; right?</p> <p>7 A. Yes.</p> <p>8 Q. Did I read that correctly? Okay, so reading</p> <p>9 that, what's the purpose of the colors?</p> <p>10 A. The purpose of the colors is to reinforce the 09:59:53</p> <p>11 position of the finger button, which indicates whether</p> <p>12 or not a dosage has or has not been taken.</p> <p>13 Q. So do the colors reinforce position or reinforce</p> <p>14 whether a dosage is taken or not taken?</p> <p>15 A. It reinforces the position. 10:00:12</p> <p>16 Q. And the color lets you know whether the dosage is</p> <p>17 taken or not; right?</p> <p>18 A. Color indicates that a dosage has been taken, but</p> <p>19 doesn't guarantee that it's been taken.</p> <p>20 Q. So the purpose of that is letting you know dosage 10:00:30</p> <p>21 taken, not taken; right? Green, not taken; red -- I'm</p> <p>22 sorry, I have that backwards. Red, dosage taken; green,</p> <p>23 not taken. Right? That's the purpose of those?</p> <p>24 A. Yes.</p> <p>25 Q. Turn, please, one page over, to column 6, the 10:00:54</p> <p style="text-align: right;">Page 63</p>	<p>1 Q. It does; right? It states: Taken in conjunction</p> <p>2 with the company drawings; right?</p> <p>3 A. Yes.</p> <p>4 Q. Turn to figure 2, please, of the 358 patent. See</p> <p>5 that figure? 10:02:53</p> <p>6 A. Yes.</p> <p>7 Q. You've seen that before; right?</p> <p>8 A. Yes.</p> <p>9 Q. There are four slides pictured on that image of</p> <p>10 the device; correct? 10:03:05</p> <p>11 A. That's correct.</p> <p>12 Q. Do you see, there's the finger buttons? See</p> <p>13 those?</p> <p>14 A. Yes.</p> <p>15 Q. And you see there is the dosage indicators. I 10:03:14</p> <p>16 think they're labeled 140 in this figure. See that?</p> <p>17 A. Yes.</p> <p>18 Q. See next to the finger buttons, there's like</p> <p>19 crosshatching. See the crosshatching? They look</p> <p>20 different on either side of the finger button. Do you 10:03:27</p> <p>21 notice that?</p> <p>22 A. I don't see that they look different. There's</p> <p>23 not enough information here to see that. I don't see</p> <p>24 any crosshatching at all on the other side.</p> <p>25 Q. You've written a book about using markers to 10:03:38</p> <p style="text-align: right;">Page 65</p>

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<p>1 render figures, haven't you?</p> <p>2 A. Uh-huh, yes.</p> <p>3 Q. And I believe you espouse the virtues of detail</p> <p>4 in making drawings and design, don't you?</p> <p>5 A. Yes. 10:03:49</p> <p>6 Q. And the details are important to the user;</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And you're an expert on that, aren't you?</p> <p>10 A. Yes. 10:03:55</p> <p>11 Q. Okay. Figure 2, see the finger buttons?</p> <p>12 A. Yes.</p> <p>13 Q. See the base of the finger buttons, the</p> <p>14 cross-hatchings? See those?</p> <p>15 A. Yes. 10:04:02</p> <p>16 Q. You see those; right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know what that's supposed to</p> <p>19 represent?</p> <p>20 A. That is supposed to represent what's described as 10:04:07</p> <p>21 240. Is it all right if I refer to the patent?</p> <p>22 Q. Oh, of course.</p> <p>23 A. It refers to the slide base channel surface.</p> <p>24 Q. Right. So the colors, the cross-hatchings,</p> <p>25 that's used to indicate whether or not a dosage is 10:04:37</p> <p style="text-align: right;">Page 66</p>	<p>1 your testimony, you think they could be there, but none</p> <p>2 are shown in the figures, are they?</p> <p>3 A. Okay. We have to be very careful about</p> <p>4 terminology, because one of the -- you asked earlier if</p> <p>5 there was any confusion in my reading of the patent, but 10:06:02</p> <p>6 there are some elements of the patent that are described</p> <p>7 as having a top, a bottom, a left side and a right side.</p> <p>8 There are other parts that are described as having four</p> <p>9 sides, and so it's not always consistent terminology</p> <p>10 from one component to the other. 10:06:28</p> <p>11 Q. Okay, that's fine. What I'm asking you is, are</p> <p>12 there any figures in the patent that show the buttons on</p> <p>13 the sides?</p> <p>14 A. On the sides?</p> <p>15 Q. Yes. Let me try this again. 10:06:37</p> <p>16 Any figures in the patent of the buttons and</p> <p>17 orientation, other than this way you see here, in</p> <p>18 figure 2?</p> <p>19 A. There's top feeders in figures 3 and 4.</p> <p>20 Q. Right. And the buttons are oriented in view; 10:06:52</p> <p>21 correct?</p> <p>22 A. There's bottom views in figure 5.</p> <p>23 Q. I'm sorry. Your contention is figure 5 shows the</p> <p>24 buttons on the bottom of this device, or is it a view</p> <p>25 from the bottom up? 10:07:08</p> <p style="text-align: right;">Page 68</p>
<p>1 taken; correct?</p> <p>2 A. Or not taken.</p> <p>3 Q. Or not taken, exactly. Thank you.</p> <p>4 And this part, right, with the finger</p> <p>5 buttons and dosage indicators, faces the user. 10:04:47</p> <p>6 A. Can face the user, yes.</p> <p>7 Q. Can the finger button -- let me ask you this.</p> <p>8 For this invention, could the finger buttons and the</p> <p>9 dosage indicators not face the user?</p> <p>10 A. Certainly. 10:05:07</p> <p>11 Q. How would that indicate whether a dosage is taken</p> <p>12 or not?</p> <p>13 A. Well, I think that, as a person becomes</p> <p>14 accustomed to using this particular device, they might</p> <p>15 hold the vial in a way that the buttons are on this 10:05:16</p> <p>16 side, and just by feeling, they know that they can lift</p> <p>17 the switch to one side or the other. So I don't think</p> <p>18 they always see it, but certainly, certainly in the</p> <p>19 beginning when they're getting used to the device,</p> <p>20 they're going to look at it. 10:05:35</p> <p>21 Q. In this figure 2, the buttons and the indicators</p> <p>22 are on top, right, on this space of the image; correct?</p> <p>23 A. Yes.</p> <p>24 Q. There are no figures in the patent that show</p> <p>25 finger buttons on the sides, are there? I understand 10:05:47</p> <p style="text-align: right;">Page 67</p>	<p>1 A. From the bottom up of the finger buttons.</p> <p>2 Q. And looking at figure 5, the buttons, specific</p> <p>3 finger button hole, it would be on the top side,</p> <p>4 consistent with figure 2; right?</p> <p>5 A. Say that again. 10:07:20</p> <p>6 Q. So from figure 5, you're saying it's the</p> <p>7 perspective view from the bottom, but the orientation of</p> <p>8 the device is not any different. The finger buttons</p> <p>9 still point to the finger button holes, in the same</p> <p>10 orientation as on figure 2; correct? 10:07:34</p> <p>11 A. Yes.</p> <p>12 Q. Could you orient the buttons in a different way</p> <p>13 for the device, like say in a circle?</p> <p>14 MR. PEELER: What claim are you asking him</p> <p>15 to construe at this point? 10:07:49</p> <p>16 MR. HOGAN: I'm asking the question about</p> <p>17 construction. Do you have an objection outside the</p> <p>18 scope? Thank you.</p> <p>19 MR. PEELER: I just want to understand what</p> <p>20 it is. 10:07:58</p> <p>21 BY MR. HOGAN:</p> <p>22 Q. You can answer, sir.</p> <p>23 A. Ask your question again, please.</p> <p>24 Q. Could you have the buttons in a circle?</p> <p>25 A. On this device? 10:08:05</p> <p style="text-align: right;">Page 69</p>

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<p>1 Q. Yes.</p> <p>2 A. As it's configured?</p> <p>3 Q. Yes.</p> <p>4 A. Well, are you talking about a circle around the</p> <p>5 device, around the vial? 10:08:22</p> <p>6 Q. Let's try that one.</p> <p>7 A. They could be redesigned so that you could</p> <p>8 possibly do that, although it would be -- have a lot of</p> <p>9 challenges in terms of manufacturing.</p> <p>10 Q. Okay. Manufactured counters do it that way. How 10:08:40</p> <p>11 about this? Say like a rectangle, how about a circle</p> <p>12 like this, not a rectangle, a circle like that. Can you</p> <p>13 do it that way?</p> <p>14 A. I believe, in the prior art, there are some</p> <p>15 devices that are on top of the cap. 10:08:54</p> <p>16 Q. Not on the cap, on the side, a circle on the</p> <p>17 side. Does that work?</p> <p>18 A. Circle on the side? I mean, you could make one,</p> <p>19 whether or not it would be very usable.</p> <p>20 Q. Wouldn't work very well; right? 10:09:07</p> <p>21 A. Yes.</p> <p>22 Q. Circle structure wouldn't work very well?</p> <p>23 A. I don't think so.</p> <p>24 Q. Okay. The rectangular shape of the device, it</p> <p>25 fits on the long axis of a pill bottle; right? 10:09:22</p> <p style="text-align: right;">Page 70</p>	<p>1 Q. Every single word?</p> <p>2 A. I believe so.</p> <p>3 Q. When I say write, I mean you pounded it out on</p> <p>4 your own computer?</p> <p>5 A. Yes. 10:11:07</p> <p>6 Q. And this declaration contains all of your</p> <p>7 opinions of the claim we're in in this case; right?</p> <p>8 A. Yes, at that time.</p> <p>9 Q. At that time. Again, you keep referring to the</p> <p>10 fact that you want to possibly change your opinions. 10:11:25</p> <p>11 A. Yes.</p> <p>12 Q. Reserve the right to?</p> <p>13 A. Yes.</p> <p>14 Q. Am I right in understanding, sir, that you don't</p> <p>15 have confidence in your declaration as written, that 10:11:40</p> <p>16 your opinions might change?</p> <p>17 A. There's one item that I want to change.</p> <p>18 Q. That's the slide base channel; correct?</p> <p>19 A. Yes.</p> <p>20 Q. We'll get to that in a few minutes. 10:11:54</p> <p>21 A. Okay.</p> <p>22 Q. Anything else, as of right now, you think you</p> <p>23 want to change?</p> <p>24 A. No.</p> <p>25 Q. Plaintiff's opening brief on claim construction, 10:12:02</p> <p style="text-align: right;">Page 72</p>
<p>1 A. Yes.</p> <p>2 Q. Instead of a curved back, so it fits right on the</p> <p>3 pill bottle; right?</p> <p>4 A. I believe that's the intent.</p> <p>5 Q. Take out K-5. That's your declaration. I'm 10:09:34</p> <p>6 going to go through this declaration of yours. This</p> <p>7 is -- it says at the top, declaration of Ronald</p> <p>8 B. Kemnitzer; correct?</p> <p>9 A. Yes.</p> <p>10 Q. It was filed March 13th, 2015; right? 10:10:18</p> <p>11 A. Yes.</p> <p>12 Q. And if you look at page 6 of 6, it's --</p> <p>13 when I say page 6 of 6, I'm referring to that legend at</p> <p>14 the top.</p> <p>15 A. Yes. 10:10:33</p> <p>16 Q. Page 6 of 6 says: I declare, under penalty of</p> <p>17 perjury, that the foregoing is true and correct this</p> <p>18 13th day of March, 2015, and there's a signature there.</p> <p>19 See that?</p> <p>20 A. Yes. 10:10:45</p> <p>21 Q. Is that your signature there?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Please look back at page 1 of 6.</p> <p>24 Did you write this declaration?</p> <p>25 A. Yes. 10:10:58</p> <p style="text-align: right;">Page 71</p>	<p>1 you read it; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Defendant's opening brief on claim construction,</p> <p>4 have you read that?</p> <p>5 A. Yes. 10:12:16</p> <p>6 Q. Did you change your mind about slide base channel</p> <p>7 before or after you read defendant's brief?</p> <p>8 A. After.</p> <p>9 Q. After?</p> <p>10 Exhibit K-4 is plaintiff's opening claim 10:12:40</p> <p>11 construction brief. Pull that out.</p> <p>12 Backing up. Do you have any opinions about</p> <p>13 claim construction that are not identified in your</p> <p>14 declaration?</p> <p>15 A. Not to my knowledge. 10:12:58</p> <p>16 Q. So page 1 is introduction, page 2 has some</p> <p>17 irrelevant legal stuff in it. Go to page 3, please.</p> <p>18 A. Okay.</p> <p>19 Q. See the subheading about halfway down,</p> <p>20 construction disputed claim terms? 10:13:22</p> <p>21 A. Uh-huh, yes.</p> <p>22 Q. Second sentence starts, says: Plaintiff's</p> <p>23 position is that claim terms should be given their</p> <p>24 ordinary and customary meaning, period. Did I read that</p> <p>25 right? 10:13:34</p> <p style="text-align: right;">Page 73</p>

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<p>1 A. Yes.</p> <p>2 Q. Therefore, plaintiff did not identify terms for</p> <p>3 judicial construction; right?</p> <p>4 A. Yes.</p> <p>5 Q. You've read plaintiff's opening brief. I have to 10:13:46</p> <p>6 assume you've read your declaration because you signed</p> <p>7 it and you wrote it; right?</p> <p>8 A. That's a good assumption.</p> <p>9 Q. Thank you.</p> <p>10 The contents of certain paragraphs of your 10:14:06</p> <p>11 declaration are almost verbatim, the same as plaintiff's</p> <p>12 opening brief. Did you notice that?</p> <p>13 A. Yes.</p> <p>14 Q. You didn't write plaintiff's opening brief, did</p> <p>15 you? 10:14:20</p> <p>16 A. No.</p> <p>17 Q. Do you know who did?</p> <p>18 A. Mr. Peeler.</p> <p>19 Q. Did you have plaintiff's brief in front of you</p> <p>20 when you wrote your declaration? 10:14:48</p> <p>21 A. I don't recall.</p> <p>22 Q. Is it possible?</p> <p>23 A. It's possible.</p> <p>24 Q. So it's possible you wrote your declaration,</p> <p>25 copying right off the plaintiff's opening brief; right? 10:15:14</p> <p style="text-align: right;">Page 74</p>	<p>1 Q. Possible, though?</p> <p>2 A. It could be possible.</p> <p>3 Q. Okay. Do you recall arriving at your opinions as</p> <p>4 expressed in your declaration?</p> <p>5 A. Yes. 10:16:38</p> <p>6 Q. How did you arrive at them?</p> <p>7 MR. PEELER: Objection.</p> <p>8 THE WITNESS: Well, I read the opening claim</p> <p>9 constructions of the plaintiff's and the defendants',</p> <p>10 and then I addressed the disputed terms. I researched 10:17:02</p> <p>11 the patent and came to my own conclusions.</p> <p>12 BY MR. HOGAN:</p> <p>13 Q. Okay. I think defendants' brief was served after</p> <p>14 plaintiff's brief, so you couldn't have seen defendants'</p> <p>15 brief ahead of time. Is there a draft of your 10:17:24</p> <p>16 declaration in existence?</p> <p>17 A. I don't think so.</p> <p>18 Q. So when you talk about the plaintiff's</p> <p>19 construction, do you mean the joint claim construction</p> <p>20 brief -- the joint claim construction statement; right? 10:17:56</p> <p>21 You don't mean the brief?</p> <p>22 A. That's what I meant.</p> <p>23 Q. And you're referring to the plaintiff's -- also,</p> <p>24 claim construction. Is that what you mean?</p> <p>25 A. No, I'm -- I refer to the joint construction. I 10:18:03</p> <p style="text-align: right;">Page 76</p>
<p>1 A. No, I didn't copy right off plaintiff's opening</p> <p>2 brief.</p> <p>3 Q. How about writing words that seem identical to</p> <p>4 plaintiff's opening brief in your declaration?</p> <p>5 A. Am I permitted to discuss collaborations with the 10:15:28</p> <p>6 client?</p> <p>7 MR. PEELER: No.</p> <p>8 BY MR. HOGAN:</p> <p>9 Q. You can't tell me?</p> <p>10 MR. PEELER: I don't know what the question 10:15:46</p> <p>11 is.</p> <p>12 THE WITNESS: Would you ask the question</p> <p>13 again, please?</p> <p>14 BY MR. HOGAN:</p> <p>15 Q. Yes. Did you write your declaration with 10:15:51</p> <p>16 plaintiff's brief in front of you, and substantially</p> <p>17 using the same words in plaintiff's brief, and put them</p> <p>18 in your declaration?</p> <p>19 MR. PEELER: Hold on. Are you asking if he</p> <p>20 typed it? Because I typed it, the initial draft. I 10:16:04</p> <p>21 want to make sure the record is clear on that.</p> <p>22 MR. HOGAN: I think the record is clear.</p> <p>23 BY MR. HOGAN:</p> <p>24 Q. Would you answer my question, sir?</p> <p>25 A. I don't recall. 10:16:13</p> <p style="text-align: right;">Page 75</p>	<p>1 did have a copy of the plaintiff's preliminary claim</p> <p>2 construction --</p> <p>3 Q. In front of you?</p> <p>4 A. -- early on in the case.</p> <p>5 Q. You had that in front of you when you were doing 10:18:17</p> <p>6 your declaration?</p> <p>7 A. Yes. Oh, well, I'm not sure that I did have it</p> <p>8 in front of me. The preliminary claim construction?</p> <p>9 Q. Yes, the joint statement.</p> <p>10 A. The joint statement? 10:18:35</p> <p>11 Q. Yes.</p> <p>12 A. The joint statement, I may have, but I don't</p> <p>13 recall for sure.</p> <p>14 Q. Okay. Were you involved in creating plaintiff's</p> <p>15 preliminary claim construction? 10:18:43</p> <p>16 A. We had conversations.</p> <p>17 Q. With Mr. Peeler?</p> <p>18 A. Yes.</p> <p>19 Q. Were they your proposals for the claim</p> <p>20 constructions, or you don't recall? 10:18:56</p> <p>21 MR. PEELER: That's just a yes or no</p> <p>22 question, or an, "I don't recall."</p> <p>23 THE WITNESS: Say it again, please.</p> <p>24 BY MR. HOGAN:</p> <p>25 Q. Were they your proposals? 10:19:06</p> <p style="text-align: right;">Page 77</p>

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<p>1 A. No.</p> <p>2 Q. Do you recall anything else you used in coming to</p> <p>3 formulate the declaration, the opinions stated in your</p> <p>4 declaration? I know we have your Exhibit K-1, you</p> <p>5 consulted that stuff, you said. But anything else you 10:19:22</p> <p>6 specifically remember using in forming the opinions as</p> <p>7 expressed in your declaration?</p> <p>8 A. No.</p> <p>9 Q. Did you take any notes in the course of preparing</p> <p>10 your declaration? 10:19:35</p> <p>11 A. Handwritten notes?</p> <p>12 Q. Yes.</p> <p>13 A. No.</p> <p>14 Q. Typewritten notes on a computer?</p> <p>15 A. Yes. I should clarify that. I did a very rough 10:19:50</p> <p>16 outline on a computer and then evolved that. So those</p> <p>17 steps weren't saved.</p> <p>18 Q. Those steps weren't saved.</p> <p>19 Did you have any notes, though? I mean,</p> <p>20 conversations, notes about drafts, notes about issues 10:20:20</p> <p>21 you made for yourself? Outlined in my book are notes.</p> <p>22 If it's not in the form of a declaration, those are</p> <p>23 notes. Anything that's not the declaration, do you have</p> <p>24 copies of that?</p> <p>25 A. I have notes in my file of the -- as I read the 10:20:35</p> <p style="text-align: right;">Page 78</p>	<p>1 identical product.</p> <p>2 Q. You used the phrase one of ordinary skill in the</p> <p>3 art in that sentence; right?</p> <p>4 A. Yes.</p> <p>5 Q. And you wrote that sentence; right? 10:21:50</p> <p>6 A. Yes.</p> <p>7 Q. What's that phrase mean, one of ordinary skill in</p> <p>8 the art?</p> <p>9 A. I just answered that.</p> <p>10 Q. Let me have it again. 10:22:00</p> <p>11 A. It's one -- it's a person who, through education</p> <p>12 and/or experience, is capable of designing the product</p> <p>13 at issue.</p> <p>14 Q. And that's your definition of a person of</p> <p>15 ordinary skill in the art for this patent; right? 10:22:14</p> <p>16 A. Yes.</p> <p>17 Q. How much education?</p> <p>18 A. For this particular product, in all honesty,</p> <p>19 little.</p> <p>20 Q. How much is little? 10:22:29</p> <p>21 A. Well, I would base it on the inventor of it, who</p> <p>22 had none, from my understanding.</p> <p>23 Q. So you're basing your definition of a person of</p> <p>24 ordinary skill in the art on the inventor?</p> <p>25 A. No, I'm basing how much education one might have, 10:22:51</p> <p style="text-align: right;">Page 80</p>
<p>1 patent 20 times, and read the file histories and those</p> <p>2 things, I made notes for myself, yes.</p> <p>3 Q. Okay. Have you talked with anybody or otherwise</p> <p>4 communicated with anybody, other than Mr. Peeler, about</p> <p>5 claim construction in this case? 10:20:56</p> <p>6 A. No.</p> <p>7 Q. Have you e-mailed anybody about the claim</p> <p>8 construction in this case other than Mr. Peeler?</p> <p>9 A. No.</p> <p>10 MR. HOGAN: We asked for production of 10:21:05</p> <p>11 witness' notes on claim constructions.</p> <p>12 MR. PEELER: I don't that think you're</p> <p>13 entitled to those.</p> <p>14 MR. HOGAN: We are.</p> <p>15 MR. PEELER: I don't think you are. 10:21:12</p> <p>16 MR. HOGAN: Factual notes, we're entitled to</p> <p>17 production. We can fight about that later. It's on the</p> <p>18 record.</p> <p>19 BY MR. HOGAN:</p> <p>20 Q. Paragraph 3 of your report, second sentence says: 10:21:23</p> <p>21 Testimony is one of ordinary skill in the art.</p> <p>22 A. Yes.</p> <p>23 Q. What does that mean?</p> <p>24 A. That means somebody who is qualified, through</p> <p>25 education and experience, to have designed a similar or 10:21:37</p> <p style="text-align: right;">Page 79</p>	<p>1 based on the inventor.</p> <p>2 Q. How do you know the inventor had no education?</p> <p>3 A. I was told that.</p> <p>4 Q. By whom?</p> <p>5 A. Mr. Peeler. 10:23:00</p> <p>6 Q. What kind of experience would a person with</p> <p>7 ordinary skill in the art have for the 358 patent?</p> <p>8 A. Well, anybody who has some knowledge of the issue</p> <p>9 at hand, with taking medications and understanding the</p> <p>10 problems associated with keeping track of whether a 10:23:21</p> <p>11 medication has been taken or not; somebody who has</p> <p>12 experience taking more than one medication, and that</p> <p>13 includes just about all of us, I think. And somebody</p> <p>14 who has some curiosity about how it might be made less</p> <p>15 confusing and better, and just using practical 10:23:47</p> <p>16 experience of how things work.</p> <p>17 Through education, industrial designers really</p> <p>18 have a good working knowledge of manufacturing processes</p> <p>19 and materials.</p> <p>20 Q. I want to stop you -- I'm sorry, go ahead. 10:24:04</p> <p>21 A. But I think it would take a very low level of</p> <p>22 sophistication of that knowledge for this particular</p> <p>23 product.</p> <p>24 Q. Okay. So you just told me that a person of</p> <p>25 ordinary skill in the art would have little or no 10:24:21</p> <p style="text-align: right;">Page 81</p>

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<p>1 education, and their experience relevant to the fact</p> <p>2 would be taking medications or having problems taking</p> <p>3 medications, or being confused taking it; is that right?</p> <p>4 A. I said that a person could have little or no</p> <p>5 education if it was supplemented -- I didn't say this 10:24:36</p> <p>6 was supplemented by experience.</p> <p>7 Q. Okay. But you keep talking about designers,</p> <p>8 design engineers. If a person of ordinary skill in the</p> <p>9 art, according to your definition, has little or no</p> <p>10 education, and their experience includes taking 10:24:48</p> <p>11 medication, why would what a designer thinks mean</p> <p>12 anything in this case?</p> <p>13 A. Why would what?</p> <p>14 Q. Why would what a designer thinks means anything</p> <p>15 in this case? 10:24:56</p> <p>16 A. Because that's one of the tests for the patent.</p> <p>17 Q. One of the tests for the patent?</p> <p>18 A. Yes.</p> <p>19 Q. What does that mean?</p> <p>20 A. Well, for example of obviousness, the test is for 10:25:02</p> <p>21 a person of ordinary skill in the art, would see that by</p> <p>22 combining this -- an existing design with one or more</p> <p>23 other designs, that you would make the equivalent of the</p> <p>24 design at issue.</p> <p>25 Q. I'm sorry, so you gave me your definition of a 10:25:21</p> <p>Page 82</p>	<p>1 A. It is one of them.</p> <p>2 Q. How many people with ordinary skill in the art</p> <p>3 are there, in your mind?</p> <p>4 A. In my mind, I think everybody has ordinary skill</p> <p>5 in the art for something. 10:26:55</p> <p>6 Q. I'm talking about this patent. I just want to</p> <p>7 know if your definition for a person of ordinary skill</p> <p>8 in the art, for purposes of this patent, is everyone.</p> <p>9 Is that fair?</p> <p>10 A. No. 10:27:13</p> <p>11 Q. What is it, then?</p> <p>12 A. A person -- I answered that. A person who has</p> <p>13 experience with taking medications, with the problems of</p> <p>14 taking medications, with the problems of verifying</p> <p>15 dosages taken, somebody with experience and/or knowledge 10:27:27</p> <p>16 of that issue, knowledge of the range of solid oral</p> <p>17 medication vials, and some basic understanding of how</p> <p>18 things are made, how things are -- can work. It may be</p> <p>19 through education or it may just be experience at</p> <p>20 working, using products that have similar kinds of 10:28:00</p> <p>21 actions, flipping a switch and seeing whether it's on or</p> <p>22 off. Combined, all of those elements could result in a</p> <p>23 person capable of designing this product.</p> <p>24 Q. Okay. And I think in your declaration, and in</p> <p>25 plaintiff's opening brief, it's replete with statements 10:28:20</p> <p>Page 84</p>
<p>1 person of ordinary skill in the art with little</p> <p>2 education, and experience includes taking medications or</p> <p>3 being confused by medication. Then you say a person of</p> <p>4 ordinary skill in the art would also have opinions about</p> <p>5 design and obvious analysis. That's what you just told 10:25:35</p> <p>6 me. So is the person with ordinary skill in the art any</p> <p>7 of those? Is that your testimony, sir?</p> <p>8 A. I think I said that it could be any of those,</p> <p>9 yes. In this particular case it's not a complicated,</p> <p>10 highly technical product. It's something that requires 10:25:56</p> <p>11 very little experience in terms of manufacturing and</p> <p>12 materials in order to develop the idea concept.</p> <p>13 Q. Okay. And yet -- so given your testimony just</p> <p>14 now, why does it matter what a designer thinks, if the</p> <p>15 person with ordinary skill in the art has little 10:26:18</p> <p>16 education and experience only taking medication?</p> <p>17 MR. PEELER: Objection.</p> <p>18 BY MR. HOGAN:</p> <p>19 Q. Can you tell me that, sir?</p> <p>20 A. I didn't say that. 10:26:30</p> <p>21 Q. You didn't say that?</p> <p>22 A. No.</p> <p>23 Q. Okay. So if a designer could have opinions</p> <p>24 relevant to what's obvious, by obvious designs, is that</p> <p>25 the person with ordinary skill in the art, a designer? 10:26:37</p> <p>Page 83</p>	<p>1 that the claim terms at issue have a plain, ordinary</p> <p>2 meaning; right?</p> <p>3 A. Uh-huh, yes.</p> <p>4 Q. How did -- so you gave me your opinion what you</p> <p>5 believe to be a person of ordinary skill in the art is. 10:29:09</p> <p>6 How did you arrive at that?</p> <p>7 A. By studying the device, by the patent, complexity</p> <p>8 of the patent, and that's pretty much it.</p> <p>9 Q. Okay. Given that, are you a person of ordinary</p> <p>10 skill in the art for this patent? 10:29:35</p> <p>11 A. Yes.</p> <p>12 Q. Am I?</p> <p>13 A. I don't know what your knowledge of manufacturing</p> <p>14 methods are.</p> <p>15 Q. I read the patent and the file history. 10:29:42</p> <p>16 A. Okay.</p> <p>17 Q. I've taken drugs.</p> <p>18 A. Have you ever made anything?</p> <p>19 Q. So are you saying to me now, that a parson of</p> <p>20 ordinary skill in the art needs that knowledge of 10:29:55</p> <p>21 manufacturing; is that correct?</p> <p>22 A. I did say that.</p> <p>23 Q. Okay.</p> <p>24 A. I did say that. I said it could be as a result</p> <p>25 of just using things, understanding how simple 10:30:03</p> <p>Page 85</p>

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<p>1 mechanisms work, and then translating that knowledge 2 into this design.</p> <p>3 Q. So in your mind that means -- that's 4 manufacturing. You didn't say manufacturing. You said 5 it a second time. So manufacturing, a person of 10:30:17 6 ordinary skill needs a knowledge of manufacturing as 7 well; right?</p> <p>8 A. Well, I may have been too general and said 9 mechanical activities, mechanical. I mean, if a person 10 has enough curiosity to look at a wall switch and 10:30:41 11 examine the flipping of it or the sliding of it, and 12 even taking that apart, I think they probably can 13 generate enough technical knowledge to have designed 14 this product.</p> <p>15 Q. You say in your declaration a few times, the 10:30:59 16 customary and ordinary meaning; right?</p> <p>17 A. Yes.</p> <p>18 Q. What's that mean?</p> <p>19 A. Well, a customary and ordinary meaning, I think, 20 depends on context. For instance, the term channel. If 10:31:14 21 you're standing in an irrigation field, it may have one 22 meaning; if you're watching television, it may have 23 another meaning; and in this particular case, it has yet 24 another meaning.</p> <p>25 Q. So the shape or structure of channel varies from 10:31:37 Page 86</p>	<p>1 Q. Okay. Patent, file history, definition?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Nothing further; right?</p> <p>4 A. Not to my knowledge, that I can remember at this 5 moment. 10:32:55</p> <p>6 Q. So would a person of ordinary skill in the art 7 need to consider anything other than the patent style 8 history to understand the words in the patent? I 9 understood you used some definitions, but I'm asking 10 you, a person of ordinary skill in the art, could it be 10:33:13 11 the patent itself, including the figures and the file 12 history, and understand the claims?</p> <p>13 A. That's a broad statement. Would you repeat it 14 again, please? Sorry for asking you to do that, but I 15 want to be correct. 10:33:46</p> <p>16 Q. That's fine. That's fine. 17 Can you tell me, would a person of ordinary 18 skill in the art need to consider anything other than 19 the patent and the file history to understand the claim?</p> <p>20 A. I think some could. I think others might benefit 10:34:04 21 from looking at the actual commercial embodiment of the 22 patent to understand the claim.</p> <p>23 Q. The commercial embodiment?</p> <p>24 A. Yes.</p> <p>25 Q. What's the commercial embodiment? Have you seen 10:34:26 Page 88</p>
<p>1 use to use; is that your testimony?</p> <p>2 A. No, that's not my testimony.</p> <p>3 Q. Your testimony is the meaning of the word channel 4 is different, depending on where it's used, in a field, 5 as a device in this case -- 10:31:57 6 A. Yes.</p> <p>7 Q. -- for a guy in the street sweeping the gutters?</p> <p>8 A. Uh-huh.</p> <p>9 Q. But isn't it true the essential physical 10 properties of channel never change? Same shape; right? 10:32:06 11 How else would you know what a channel is?</p> <p>12 MR. PEELER: Object; compound.</p> <p>13 THE WITNESS: Well, my interpretation of 14 channel as it applies to this particular patent, has 15 been informed by a combination of definitions, word 10:32:20 16 definitions, and what's illustrated in the patent.</p> <p>17 BY MR. HOGAN:</p> <p>18 Q. And the word definitions is one that was produced 19 to us this morning; right?</p> <p>20 A. Yes. 10:32:34</p> <p>21 Q. Anything else you considered besides the patent? 22 We'll assume the file history, and the definition you 23 produced this morning.</p> <p>24 A. And working in conjunction with the illustration 25 of the patent. 10:32:43 Page 87</p>	<p>1 it?</p> <p>2 A. Yes.</p> <p>3 Q. How many switches does it have on top, how many 4 slides? Four or seven?</p> <p>5 A. Yes. 10:34:35</p> <p>6 Q. Both?</p> <p>7 A. Yes.</p> <p>8 Q. Did you consider that in forming your opinion in 9 your declaration?</p> <p>10 A. Consider what? 10:34:42</p> <p>11 Q. Let me ask this question. When you formulated 12 the opinions in your declaration, did you consider the 13 commercial embodiment of the claimed invention in this 14 patent?</p> <p>15 A. No. 10:34:54</p> <p>16 Q. But you're -- so you're telling me that for a 17 person of ordinary skill to understand the claims, they 18 would have to read the patent, the file history, and it 19 might be beneficial to look at the commercial 20 embodiment? 10:35:07</p> <p>21 A. Yes.</p> <p>22 Q. When you say "the," and when I said commercial 23 embodiment, does it have four slides or seven slides, 24 you said yes. So in your mind, those two items are 25 interchangeable; right? 10:35:19 Page 89</p>

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<p>1 A. The patent does not define how many buttons it</p> <p>2 has. It's the plurality of buttons, so I would assume</p> <p>3 two or more.</p> <p>4 Q. Which embodiments have you seen?</p> <p>5 A. I've seen the Duer embodiment and the accused 10:35:35</p> <p>6 product.</p> <p>7 Q. The Duer embodiment had four slides; right?</p> <p>8 A. I believe so.</p> <p>9 Q. And the accused device has seven slides?</p> <p>10 A. Seven slides. 10:35:55</p> <p>11 Q. Do you know who manufactured either of those two</p> <p>12 items?</p> <p>13 A. Do what?</p> <p>14 Q. Do you know who manufactured those two items?</p> <p>15 A. I believe the accused product was manufactured by 10:36:03</p> <p>16 one of the defendants.</p> <p>17 Q. And the Duer version with four slides, who made</p> <p>18 that?</p> <p>19 A. I don't know. I don't know the name.</p> <p>20 Q. You said that the seven slide, you think was made 10:36:15</p> <p>21 by one of the defendants. How do you know that?</p> <p>22 A. I was told that.</p> <p>23 Q. By whom?</p> <p>24 A. Mr. Peeler.</p> <p>25 Q. Could it have been made by Duer? 10:36:24</p> <p style="text-align: right;">Page 90</p>	<p>1 accused product, which is in one of the exhibits that</p> <p>2 are listed in the materials.</p> <p>3 Q. Do you plan on preparing and serving a follow-up</p> <p>4 report?</p> <p>5 A. Yes. 10:37:40</p> <p>6 MR. PEELER: Hold on.</p> <p>7 THE WITNESS: If asked.</p> <p>8 MR. PEELER: Thank you.</p> <p>9 MR. HOGAN: If he provides a report, we</p> <p>10 reserve the right to depose him again on that report. 10:37:52</p> <p>11 MR. BURWELL: And just to be clear, a</p> <p>12 follow-up report related to claim construction?</p> <p>13 MR. PEELER: It's his question. Ask him.</p> <p>14 MR. HOGAN: His answer.</p> <p>15 MR. PEELER: Ask him what he meant by the 10:38:04</p> <p>16 question.</p> <p>17 BY MR. HOGAN:</p> <p>18 Q. Did you understand what I meant by the question,</p> <p>19 sir?</p> <p>20 MR. PEELER: I did not. 10:38:07</p> <p>21 THE WITNESS: You asked if I was going to</p> <p>22 prepare another report.</p> <p>23 BY MR. HOGAN:</p> <p>24 Q. Yes, on claim construction.</p> <p>25 A. I don't think you said claim construction. 10:38:12</p> <p style="text-align: right;">Page 92</p>
<p>1 A. Well --</p> <p>2 MR. PEELER: What, the accused device was</p> <p>3 made by her?</p> <p>4 MR. HOGAN: Object or be quiet.</p> <p>5 BY MR. HOGAN: 10:36:36</p> <p>6 Q. Do you understand the question?</p> <p>7 MR. PEELER: Objection. I don't understand</p> <p>8 the question.</p> <p>9 BY MR. HOGAN:</p> <p>10 Q. Do you understand the question, sir? 10:36:42</p> <p>11 A. Ask it again, please.</p> <p>12 MR. HOGAN: Would you read it back to him</p> <p>13 before the colloquy, please.</p> <p>14 (The record was read by the reporter as</p> <p>15 requested.) 10:36:57</p> <p>16 MR. PEELER: Objection.</p> <p>17 BY MR. HOGAN:</p> <p>18 Q. Could the seven-slide version have been made by</p> <p>19 Duer?</p> <p>20 A. It looks to me like it could have been, yes. 10:37:03</p> <p>21 Q. Do you know for a fact whether the one you saw</p> <p>22 with seven slides was made by Duer or made by the</p> <p>23 defendants?</p> <p>24 A. I believe that the one that I saw with the seven</p> <p>25 slides matched one of the photographs that I saw of the 10:37:17</p> <p style="text-align: right;">Page 91</p>	<p>1 Q. I'm clarifying. On claim construction.</p> <p>2 A. No.</p> <p>3 Q. No?</p> <p>4 A. I think we'll file --</p> <p>5 MR. PEELER: Don't guess about what I might 10:38:20</p> <p>6 ask you to do for me.</p> <p>7 BY MR. HOGAN:</p> <p>8 Q. In other words, it's possible you may prepare</p> <p>9 other declarations in this case, on other issues. Is</p> <p>10 that what you mean to say? 10:38:30</p> <p>11 A. If asked.</p> <p>12 Q. Understood.</p> <p>13 Turn to paragraph 5 of your declaration,</p> <p>14 please. You read that paragraph; right?</p> <p>15 A. Uh-huh. 10:38:46</p> <p>16 Q. What's your definition of front plate? Sorry.</p> <p>17 Let me ask that again.</p> <p>18 What's your construction of front plate?</p> <p>19 MR. PEELER: I'm going to object to that.</p> <p>20 The court's going to construe the claim terms. 10:39:03</p> <p>21 BY MR. HOGAN:</p> <p>22 Q. You can answer.</p> <p>23 MR. PEELER: Subject to that, you can</p> <p>24 answer.</p> <p>25 BY MR. HOGAN: 10:39:12</p> <p style="text-align: right;">Page 93</p>

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<p>1 Q. I'm looking at paragraph 5 of your declaration.</p> <p>2 That's what I'm asking you about. What's it state</p> <p>3 there?</p> <p>4 A. It means the front structure of the dosage strip.</p> <p>5 And I can refer to figure 1 and point out what I'm 10:39:23</p> <p>6 referring to.</p> <p>7 Q. Possibly. Let me ask you. So in paragraph 5 of</p> <p>8 your declaration in this case, in support of claim</p> <p>9 construction, there's no citation in this paragraph to</p> <p>10 anything; isn't that true? 10:39:37</p> <p>11 A. That's true.</p> <p>12 MR. PEELER: I object to that.</p> <p>13 THE WITNESS: I refer to the patent in the</p> <p>14 file history.</p> <p>15 BY MR. HOGAN: 10:39:48</p> <p>16 Q. Where? Not in paragraph 5, you don't.</p> <p>17 A. In context of the patent and file history.</p> <p>18 Q. But you cite nothing specifically, no pages, no</p> <p>19 line numbers; right?</p> <p>20 A. No. 10:39:55</p> <p>21 Q. There's no extrinsic evidence, no dictionary</p> <p>22 cited here.</p> <p>23 A. No.</p> <p>24 Q. No treatise cited here.</p> <p>25 A. No. 10:40:04</p> <p style="text-align: right;">Page 94</p>	<p>1 A. Now, I understand -- I don't think it gives an</p> <p>2 unusual meaning. I think it refers to the overall</p> <p>3 structure of that particular part, which is referred to</p> <p>4 in the abstract as the front plate, one of the three</p> <p>5 main components. 10:42:01</p> <p>6 Q. And your opinion is the ordinary and customary</p> <p>7 meaning of the front plate is what's stated in</p> <p>8 paragraph 5; right?</p> <p>9 A. Yes, it's the plate on the front.</p> <p>10 Q. Do you think the meaning of front plate is clear, 10:42:13</p> <p>11 after considering the patent and the file history?</p> <p>12 A. Yes.</p> <p>13 Q. What's the ordinary and customary meaning of the</p> <p>14 word plate?</p> <p>15 A. In my understanding as a designer, it is a panel. 10:42:46</p> <p>16 For instance, it can have a lot of different meanings.</p> <p>17 A plate, there's a wall plate right over there on the</p> <p>18 wall, a switch. That's a plate. There's a plate,</p> <p>19 serving plate. There are plates on a ship.</p> <p>20 Q. Those are examples of a plate. What's plate 10:43:21</p> <p>21 mean?</p> <p>22 A. A plate means a structure.</p> <p>23 Q. A structure?</p> <p>24 A. Yes.</p> <p>25 Q. This arm of this chair I'm sitting in is a 10:43:29</p> <p style="text-align: right;">Page 96</p>
<p>1 Q. No publication cited here.</p> <p>2 A. No.</p> <p>3 Q. That's your opinion; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Given this paragraph 5 being the embodiment of 10:40:09</p> <p>6 your opinion, do you think you need to provide any</p> <p>7 additional explanation for the meaning of this term?</p> <p>8 A. No.</p> <p>9 Q. You said see figure 1. Is all of your opinion</p> <p>10 about the meaning of front plate contained in 10:40:41</p> <p>11 paragraph 5 of your declaration?</p> <p>12 A. Yes, the front structure of the assurance dosage</p> <p>13 strip.</p> <p>14 Q. Yet you want to see figure 1 to point that out?</p> <p>15 A. If you ask me to, I will. 10:40:53</p> <p>16 Q. You didn't say figure 1 here in paragraph 5, did</p> <p>17 you? No, you didn't. That's okay. I know the answer.</p> <p>18 In your view, does the patent give any</p> <p>19 unique or uncommon meaning to the term front plate?</p> <p>20 A. Are you... 10:41:19</p> <p>21 Q. We're on paragraph 5 still.</p> <p>22 A. Ask the question again.</p> <p>23 Q. Absolutely. In your opinion, does the patent</p> <p>24 give any unusual or uncommon meaning to the term front</p> <p>25 plate? 10:41:34</p> <p style="text-align: right;">Page 95</p>	<p>1 structure. That's also a plate by your definition;</p> <p>2 correct?</p> <p>3 A. No, it's a structure. A plate can be flat, it</p> <p>4 can be rounded.</p> <p>5 Q. None is provided in paragraph 5, is it, that you 10:43:48</p> <p>6 just told me? It's not there, is it?</p> <p>7 A. No.</p> <p>8 Q. In your declaration, you said there's nothing in</p> <p>9 the patent -- go to exhibit -- just to make it easier,</p> <p>10 open K-4 next to your declaration, make your life 10:44:12</p> <p>11 easier. I think you have it right there.</p> <p>12 On page 4 you say at the bottom, last</p> <p>13 sentence or so: There's nothing in the patent or its</p> <p>14 file history that adds the requirement that the front</p> <p>15 plate be, quote-unquote, thin, contrary to thin as 10:44:28</p> <p>16 proposed construction. You wrote that there; right.</p> <p>17 MR. PEELER: Where?</p> <p>18 MR. HOGAN: Page 4 of Exhibit 4. I'm sorry,</p> <p>19 page 4 of the brief.</p> <p>20 MR. PEELER: He didn't write the brief. He 10:44:40</p> <p>21 didn't tell you about the brief.</p> <p>22 BY MR. HOGAN:</p> <p>23 Q. I'll read from your declaration, which is</p> <p>24 virtually verbatim to the brief. It says: Nothing in</p> <p>25 the patent adds the requirement that the front plate be, 10:44:50</p> <p style="text-align: right;">Page 97</p>

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<p>1 quote-unquote, thin. See that?</p> <p>2 A. Yes.</p> <p>3 Q. Could the device work if the plate was thick?</p> <p>4 A. The plate is not of uniform thickness. The plate</p> <p>5 also includes the structure on the bottom side, which 10:45:10</p> <p>6 has ribs. I think it cannot be described as thin</p> <p>7 because it...</p> <p>8 Q. It's your testimony --</p> <p>9 MR. PEELER: Hold on.</p> <p>10 Were you finished with your answer? 10:45:25</p> <p>11 THE WITNESS: No -- yes, I am finished.</p> <p>12 BY MR. HOGAN:</p> <p>13 Q. Okay. You just testified that the plate includes</p> <p>14 the bottom side as well; is that correct?</p> <p>15 A. Yes. 10:45:34</p> <p>16 Q. Of the plate or of the device? I'm not sure I</p> <p>17 understand.</p> <p>18 MR. PEELER: I'm going to object that</p> <p>19 there's more than one plate referenced, and I want to</p> <p>20 make sure we get a clear record. 10:45:49</p> <p>21 MR. HOGAN: Stop coaching the witness,</p> <p>22 Charlie. You can object. Don't say anything.</p> <p>23 MR. PEELER: What I'm not going to do is sit</p> <p>24 here --</p> <p>25 MR. HOGAN: It's clarified. You tried to do 10:45:56</p> <p style="text-align: right;">Page 98</p>	<p>1 You don't need to clarify it for him. I'm asking him</p> <p>2 the questions, not you.</p> <p>3 BY MR. HOGAN:</p> <p>4 Q. Pardon me, sir, I'm sorry. Let's go back to</p> <p>5 where we were, shall we? 10:46:50</p> <p>6 A. Yes.</p> <p>7 Q. I asked you a question, could the plate be thick.</p> <p>8 We're talking about the term front plate in the patent.</p> <p>9 We're looking at paragraph 5 of your declaration. You</p> <p>10 say: Defendants' construction is wrong because in 10:47:03</p> <p>11 another climate it would be thin. Could the front plate</p> <p>12 be thick?</p> <p>13 A. Nowhere in the patent is it described as thick or</p> <p>14 thin, but the illustration in figure 1 shows it to be</p> <p>15 of -- in a dimension from the top surface to the bottom 10:47:18</p> <p>16 surface, varying thicknesses.</p> <p>17 I think thin is a limiting definition of it,</p> <p>18 because I can see clearly in figure 1, three separate</p> <p>19 thicknesses.</p> <p>20 Q. Three separate thicknesses. 10:47:51</p> <p>21 A. Are you talking --</p> <p>22 Q. Figure 1. Three separate structures in figure 1?</p> <p>23 Are you talking about --</p> <p>24 A. Three separate --</p> <p>25 Q. -- the front plate? 10:48:03</p> <p style="text-align: right;">Page 100</p>
<p>1 that. You have to be quiet.</p> <p>2 MR. PEELER: It's your job to trick him by</p> <p>3 not using the terms that are in the patent.</p> <p>4 MR. HOGAN: It's a term he used. Object to</p> <p>5 vague. 10:46:07</p> <p>6 MR. PEELER: In your question, you're</p> <p>7 talking about --</p> <p>8 MR. HOGAN: Stop talking, Charlie.</p> <p>9 MR. PEELER: In your question you're talking</p> <p>10 about front plate, and then you drop the front, and you 10:46:12</p> <p>11 start talking about the plate. You know there's</p> <p>12 something called a face plate. So ask a clear question</p> <p>13 and I won't object.</p> <p>14 MR. HOGAN: Are you done coaching the</p> <p>15 witness, Charlie? 10:46:24</p> <p>16 MR. PEELER: I never began.</p> <p>17 MR. HOGAN: You just did. All this colloquy</p> <p>18 was completely irrelevant.</p> <p>19 Here's the story. We'll go back and review</p> <p>20 Rule 30 again. I'm sure you've not read that one. You 10:46:27</p> <p>21 can object to form or on privilege.</p> <p>22 The coaching and the talking, if he's not</p> <p>23 sure what a question means, I expect of you this</p> <p>24 morning, ask for clarification. I'll gladly give it.</p> <p>25 I'll ask a new question, or I'll read the question back. 10:46:41</p> <p style="text-align: right;">Page 99</p>	<p>1 A. The front plate has three separate thicknesses.</p> <p>2 It's shown.</p> <p>3 Q. Point them out.</p> <p>4 A. This edge, this edge, that edge. Those are</p> <p>5 thicknesses. That they extend is not a complete 10:48:16</p> <p>6 definition of it.</p> <p>7 Q. You say in your CV and your personal statement of</p> <p>8 professional experience, you're -- you have experience</p> <p>9 in manufacturing and industrial design; right?</p> <p>10 A. Uh-huh. 10:48:33</p> <p>11 Q. Isn't it true, when you make consumer devices,</p> <p>12 and devices like this, the thickness of the device for</p> <p>13 molded plastic should be uniform; isn't that true?</p> <p>14 A. Not necessarily at all.</p> <p>15 Q. When is that not necessarily true? 10:48:43</p> <p>16 A. All the time. All the time.</p> <p>17 Q. Based on?</p> <p>18 A. Well, the particular need of the product.</p> <p>19 Q. Is there a need in this instance, that you're</p> <p>20 aware of? 10:48:59</p> <p>21 A. No, not at all.</p> <p>22 Q. Why don't you look at the patent, paragraph 6.</p> <p>23 I'm sorry, column 6. Column 6, starting at Line 25.</p> <p>24 I'm going to read 25 to about 27: The assurance dosage</p> <p>25 strip is dimensioned to be placed on a container, e.g., 10:49:38</p> <p style="text-align: right;">Page 101</p>

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<p>1 medicine vial, vitamin bottle, etc., to facilitate the</p> <p>2 proper taking of the contents of the container. See</p> <p>3 that?</p> <p>4 A. Uh-huh, yes.</p> <p>5 Q. That doesn't suggest to you that the device 10:49:52</p> <p>6 itself should also be thick and uniform so the pill</p> <p>7 bottles can be attached to it?</p> <p>8 A. No, it doesn't say that to me.</p> <p>9 Q. As an expert designer, you think -- that says</p> <p>10 that to you; right? That doesn't suggest that? 10:50:09</p> <p>11 MR. PEELER: Objection; vague.</p> <p>12 THE WITNESS: Wasn't your question the front</p> <p>13 plate?</p> <p>14 BY MR. HOGAN:</p> <p>15 Q. Yeah. 10:50:16</p> <p>16 A. The front plate doesn't come in contact with the</p> <p>17 pill bottle.</p> <p>18 Q. But the device --</p> <p>19 A. The back plate.</p> <p>20 Q. The device is on the pill bottle, right, and the 10:50:22</p> <p>21 front plate is part of the device?</p> <p>22 A. No, I interpret that as referring to the back</p> <p>23 plate, not necessarily the front plate. The front plate</p> <p>24 could be any shape and it could still be attached to the</p> <p>25 container. 10:50:49</p> <p style="text-align: right;">Page 102</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. In paragraph 6 you state: The front plate</p> <p>3 body means the body of the front plate.</p> <p>4 A. Yes.</p> <p>5 Q. Right? You provide no explanation for that 10:52:36</p> <p>6 meaning, no rationale, no details here; isn't that</p> <p>7 right?</p> <p>8 MR. PEELER: Objection.</p> <p>9 THE WITNESS: Correct.</p> <p>10 BY MR. HOGAN: 10:52:49</p> <p>11 Q. Correct. The next couple sentences of</p> <p>12 paragraph 6, you say why the defendant's construction is</p> <p>13 incorrect; right?</p> <p>14 A. Say that --</p> <p>15 Q. I'm sorry, I'll say that again. The next two 10:53:03</p> <p>16 sentences of paragraph 6 and to the end of paragraph 6,</p> <p>17 you give reasons why you believe defendant's</p> <p>18 construction of front plate body is wrong; right?</p> <p>19 A. Well, I also say in the context of the patent and</p> <p>20 file history, which includes the images of the patent as 10:53:24</p> <p>21 well as the keys to the patent, which are here. The</p> <p>22 front plate is number 100, which includes that entire</p> <p>23 structure.</p> <p>24 Q. Okay, so let's try it again. So paragraph 6</p> <p>25 consists of three sentences; right? 10:53:49</p> <p style="text-align: right;">Page 104</p>
<p>1 Q. It could be a circle?</p> <p>2 A. It's irrelevant as to what it would be, but if</p> <p>3 the back plate is curved, and the same curvature as the</p> <p>4 container, it can be attached. The front plate could</p> <p>5 have spikes on it and it's still attached to the 10:51:04</p> <p>6 container, which is what this says. It doesn't, in my</p> <p>7 mind, predicate the shape of the front plate.</p> <p>8 Q. Does the word spikes appear in the paragraph I</p> <p>9 just read? Is that what your testimony is?</p> <p>10 A. My testimony is that this paragraph, line 23 -- 10:51:22</p> <p>11 25, in column 6, does not address the shape or</p> <p>12 configuration of the front plate.</p> <p>13 Q. I was talking about the thickness, though. Still</p> <p>14 the same testimony? It doesn't affect the thickness of</p> <p>15 the front plate? 10:51:39</p> <p>16 A. No.</p> <p>17 Q. All right. Let's go to paragraph 6 of your</p> <p>18 report. Do you have that in front of you? That's K-5.</p> <p>19 A. I'm sorry?</p> <p>20 Q. We're on your report, K-5, paragraph 6. 10:51:57</p> <p>21 A. My declaration?</p> <p>22 Q. Yes. I said your report; I'm sorry, I mean</p> <p>23 declaration.</p> <p>24 It's on the bottom of page 1 and it goes to the</p> <p>25 top of page 2. Got that? 10:52:16</p> <p style="text-align: right;">Page 103</p>	<p>1 A. Okay.</p> <p>2 Q. The first sentence says: In the context of the</p> <p>3 patent and file history, the front plate body means the</p> <p>4 body of the front plate. 10:54:03</p> <p>5 A. Yes.</p> <p>6 Q. The other two sentences, you talk about why the</p> <p>7 defendants' construction is wrong; right?</p> <p>8 A. Right.</p> <p>9 Q. Okay. In paragraph 6 you provide no rationale</p> <p>10 and no description why you think front plate body means 10:54:14</p> <p>11 the body of the front plate. All you have is the one</p> <p>12 sentence here; right?</p> <p>13 A. I think that's sufficient.</p> <p>14 Q. Okay. And you make no such cite to the patent</p> <p>15 and the file history; right? 10:54:29</p> <p>16 A. I do not call out those numbers, but I refer to</p> <p>17 the fact that the patent, and file history in</p> <p>18 particular, the patent clearly states that.</p> <p>19 Q. You make no specific cites to the patent, file</p> <p>20 history in paragraph 6; right? 10:54:43</p> <p>21 A. No.</p> <p>22 Q. You make no specific cite to --</p> <p>23 A. Except that I consider in the context of the</p> <p>24 patent to be a specific reference.</p> <p>25 Q. With no column, no line number, no page listed 10:54:52</p> <p style="text-align: right;">Page 105</p>

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<p>1 here. Answer me that. You have no column, no line</p> <p>2 number, no page in paragraph 6; isn't that true?</p> <p>3 A. I didn't see that in these either. I didn't feel</p> <p>4 it was necessary to do that.</p> <p>5 Q. That's fine. 10:55:10</p> <p>6 A. I didn't see those citations even in the joint</p> <p>7 claim construction.</p> <p>8 Q. Okay. I appreciate that. The fact is, they're</p> <p>9 not in your declaration, are they?</p> <p>10 A. No. 10:55:23</p> <p>11 Q. You cite no publication, no treatise, no article?</p> <p>12 A. No, I did cite a publication. I cited the</p> <p>13 patent.</p> <p>14 Q. No other publications, no treatise, no articles,</p> <p>15 no scholarly articles -- 10:55:34</p> <p>16 A. No.</p> <p>17 Q. -- correct?</p> <p>18 Do you think the patent gives the term front</p> <p>19 plate body a unique or uncommon meaning?</p> <p>20 A. I think -- 10:55:47</p> <p>21 THE VIDEOGRAPHER: Excuse me. Could you</p> <p>22 move the paper off of the microphone.</p> <p>23 THE WITNESS: Oh, I'm sorry.</p> <p>24 Do you mind if I tear these pages apart?</p> <p>25 BY MR. HOGAN: 10:56:15</p> <p style="text-align: right;">Page 106</p>	<p>1 plate body, that's not in your declaration, is it? It's</p> <p>2 one sentence, without the explanation you just gave me;</p> <p>3 right?</p> <p>4 A. Right.</p> <p>5 Q. Paragraph -- column 7, line 37 of the patent, 10:58:36</p> <p>6 I'll read that sentence to you: The front plate, 100,</p> <p>7 is comprised of a front plate body, 110, a face plate,</p> <p>8 115, a rib edge, 120, et cetera, et cetera. See that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Isn't the numeral 110 labeled in figure 1? 10:59:08</p> <p>11 A. Yes.</p> <p>12 Q. Yes, it is. I guess, does the patent give unique</p> <p>13 or uncommon meaning to this claim term, front plate</p> <p>14 body?</p> <p>15 MR. PEELER: Objection; asked and answered. 10:59:25</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. HOGAN:</p> <p>18 Q. It gives a unique, uncommon meaning to it?</p> <p>19 A. Uncommon? What do you mean by uncommon?</p> <p>20 Q. I'm asking you, does it? Is the meaning of front 10:59:34</p> <p>21 plate body in this patent unique and uncommon?</p> <p>22 A. I don't know that it's uncommon. I will say that</p> <p>23 it took me a little bit of time reading through this</p> <p>24 numerous times, and going through the numbering system</p> <p>25 and the descriptions, to really get my mind wrapped 10:59:55</p> <p style="text-align: right;">Page 108</p>
<p>1 Q. I gave you a set of documents for that purpose.</p> <p>2 Here's the exhibit. You can tear that one up as you see</p> <p>3 fit.</p> <p>4 A. I will say that there are a lot of numbers</p> <p>5 referring to these illustrations, and I confess that I 10:56:40</p> <p>6 have not memorized all of the numbers and their</p> <p>7 corresponding names. So having this will help me.</p> <p>8 Q. So I guess my question I have asked, I'll reask</p> <p>9 it after you've looked at the documents for a second.</p> <p>10 Does the patent give the claim term front plate body an 10:57:05</p> <p>11 uncommon or unique meaning?</p> <p>12 A. I think in order for me to get my mind wrapped</p> <p>13 around that, I had to really sort out the numbering</p> <p>14 system on the patent and its correlation to the terms.</p> <p>15 And this 100 is pointing to that top plate, but not 10:57:30</p> <p>16 touching it, and it says the front plate body is</p> <p>17 comprised of the front plate body, or the front plate is</p> <p>18 comprised of a front plate body, 110.</p> <p>19 Now, that's not pointing to any of these</p> <p>20 other elements, so my interpretation of what the front 10:57:57</p> <p>21 plate body is, is just that, front plate body, devoid of</p> <p>22 finger button holes, Braille knobs, et cetera.</p> <p>23 Q. And I will direct you briefly, sir -- I want to</p> <p>24 ask two things. The description you just gave me in</p> <p>25 support of your construction or understanding of front 10:58:21</p> <p style="text-align: right;">Page 107</p>	<p>1 around what they are describing, as compared to the</p> <p>2 numbers and the illustrations.</p> <p>3 Q. Do you think front plate body in this patent has</p> <p>4 its ordinary and customary meanings?</p> <p>5 A. Yes. 11:00:19</p> <p>6 Q. Okay. Do you think the meaning of front plate</p> <p>7 body is clear, after considering the patent figures?</p> <p>8 A. Yes.</p> <p>9 Q. I want to -- so the term is front plate body;</p> <p>10 right? We agree on that? 11:01:10</p> <p>11 A. Yes.</p> <p>12 Q. Okay. I want to ask you a related question.</p> <p>13 What's the customary and ordinary meaning of body?</p> <p>14 A. Body refers to an overall structure.</p> <p>15 Q. In plaintiff's construction, a front plate body 11:01:24</p> <p>16 is the body of the front plate?</p> <p>17 A. Yes.</p> <p>18 Q. And the body is the overall structure?</p> <p>19 A. Yes.</p> <p>20 Q. You don't provide a definition or explanation of 11:01:32</p> <p>21 body in your declaration, do you?</p> <p>22 A. No. Only in terms of referring to the patent,</p> <p>23 which refers to it as that.</p> <p>24 Q. I'm going to look at that real quick. Keep your</p> <p>25 dec. open. You have figure 1 there; right? 11:02:00</p> <p style="text-align: right;">Page 109</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. Go to figure 1. Front plate body is 110;</p> <p>3 right? See that?</p> <p>4 A. Yes.</p> <p>5 Q. And the face plate is 115. 11:02:07</p> <p>6 A. Yes.</p> <p>7 Q. See that?</p> <p>8 A. Yes.</p> <p>9 Q. The finger button holes and dosage indicators are</p> <p>10 shown in figure 1 on the face plate; right? 11:02:16</p> <p>11 A. Yes.</p> <p>12 Q. And in 110, there's no finger button hole or</p> <p>13 dosage indicator shown; right?</p> <p>14 A. Yes.</p> <p>15 Q. In this figure 1, in this -- actually, figure 1, 11:02:24</p> <p>16 all the figures in the patent, is there a dosage</p> <p>17 indicator or a finger button on the front plate body, at</p> <p>18 space 110?</p> <p>19 A. Space 110 includes the base plate.</p> <p>20 Q. That's not what I asked you, sir. Does any 11:03:10</p> <p>21 figure in the patent show a finger button hole, a finger</p> <p>22 button, or a dosage indicator on space 110?</p> <p>23 A. No.</p> <p>24 Q. No.</p> <p>25 A. I take that back. Again, 110 includes part 11:03:19</p> <p style="text-align: right;">Page 110</p>	<p>1 finger holes, but that -- the patent doesn't limit it to</p> <p>2 four finger holes, it allows for expansion of the number</p> <p>3 of finger holes.</p> <p>4 That's accomplished -- in this particular</p> <p>5 version of this, the face plate is raised from the 11:04:51</p> <p>6 surface of the --</p> <p>7 Q. Front plate body?</p> <p>8 A. -- front plate body to create the area in which</p> <p>9 the slide, the cavities are going to be created. So the</p> <p>10 face plate, in order to accommodate this flexibility 11:05:13</p> <p>11 that's a part of the patent, can expand, or can get</p> <p>12 longer or shorter. So the face plate is that portion of</p> <p>13 the front plate that is raised. That can change. Okay?</p> <p>14 So conceivably, if you added enough holes,</p> <p>15 like seven, the face plate could extend from top to 11:05:39</p> <p>16 bottom, and this surface that you want to refer to as a</p> <p>17 separate element could disappear, and that's --</p> <p>18 Q. So -- I'm sorry, go ahead.</p> <p>19 A. And also, in my mind, that's been clarified by</p> <p>20 the numbering system, where all of the principal 11:05:57</p> <p>21 elements of the design are numbered in 10s. So it's</p> <p>22 110, 120, 130, and you can see that the face plate is</p> <p>23 number 115, which tells me that it's a subset of 110.</p> <p>24 Q. And in that seven-hole embodiment; right?</p> <p>25 A. Yeah. 11:06:25</p> <p style="text-align: right;">Page 112</p>
<p>1 number 115, which is the face plate. The patent -- I</p> <p>2 can explain my rationale for this.</p> <p>3 Q. And none of this is in your declaration, by the</p> <p>4 way; correct?</p> <p>5 A. No. 11:03:40</p> <p>6 Q. The explanation you're giving me now.</p> <p>7 A. No.</p> <p>8 Q. None of it's there?</p> <p>9 A. No.</p> <p>10 Q. In this -- 11:03:46</p> <p>11 MR. PEELER: Hold on. He wasn't done.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. HOGAN:</p> <p>14 Q. You weren't done?</p> <p>15 A. No, I wasn't finished. 11:03:53</p> <p>16 Q. Go ahead.</p> <p>17 A. Number 100 -- the way they have numbered the</p> <p>18 patent drawing is on figure 1 there's a 100, 200, 300.</p> <p>19 Those arrows do not -- they point to those three basic</p> <p>20 structures that are in the abstract. 11:04:09</p> <p>21 110 refers to the face plate body. We know</p> <p>22 in the patent that it has a plurality of finger holes.</p> <p>23 The finger holes can change. There could be anywhere</p> <p>24 from two to as many as you can cram on there.</p> <p>25 This preferred embodiment illustrates four 11:04:29</p> <p style="text-align: right;">Page 111</p>	<p>1 Q. Structure 110 couldn't exist; right?</p> <p>2 A. It disappears.</p> <p>3 Q. It disappears, it's not there?</p> <p>4 A. Not there. Now, no, no, 110 doesn't disappear.</p> <p>5 110 is still the overall structure. It's just that 11:06:35</p> <p>6 recess, that lower level that goes away.</p> <p>7 Q. I think, when you say 110 of the overall</p> <p>8 structure, 100 is the front plate, and you referred to</p> <p>9 the arrow. Front plate body is not the overall</p> <p>10 structure, front plate is; correct? 11:06:53</p> <p>11 A. Front plate is everything.</p> <p>12 Q. On the front plate?</p> <p>13 A. It's the front plate body, the holes, the</p> <p>14 Braille, all of those things.</p> <p>15 Q. Does element 110 include element 120, under your 11:07:04</p> <p>16 opinion?</p> <p>17 A. Well, no. I think those, in terms of them all</p> <p>18 being -- if we look at 100 as being the overall,</p> <p>19 everything, I think 110 and 120 are two separate</p> <p>20 elements. 11:07:38</p> <p>21 Q. And 140 would be a separate element as well;</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. How does 110 differ from 100?</p> <p>25 A. 110 is a component of 100. One of several 11:07:49</p> <p style="text-align: right;">Page 113</p>

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<p>1 components of 100.</p> <p>2 Q. Take a look on page two of your declaration.</p> <p>3 Paragraph 7 starts out: In the context of the patent</p> <p>4 and file history, the term front plate top side means 11:08:21</p> <p>5 surfaces of the front plate generally visible to the</p> <p>6 user during normal use. Did I read that right?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Okay. So the term here is front plate, top side.</p> <p>9 The second sentence says: Front plate, top side, in</p> <p>10 quotes, simply refers to the top side of the front plate 11:08:41</p> <p>11 as distinguished from the bottom side of the front</p> <p>12 plate. Did I read that sentence correctly?</p> <p>13 A. Yes.</p> <p>14 Q. And there's a cite there that says see, e.g.,</p> <p>15 column 7, line 21; right? 11:08:53</p> <p>16 A. Uh-huh.</p> <p>17 Q. Okay. Then if you look at the next two sentences</p> <p>18 of paragraph 7, read them to yourself and let me know</p> <p>19 when you're done.</p> <p>20 A. What am I reading? 11:09:13</p> <p>21 Q. The next two sentences of paragraph 7 of your</p> <p>22 declaration.</p> <p>23 A. Starting with "contrary"?</p> <p>24 Q. Yes.</p> <p>25 (Brief pause.) 11:09:22</p> <p style="text-align: right;">Page 114</p>	<p>1 A. Uh-huh.</p> <p>2 Q. You're relying on that; right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. So you think front plate, top side, is a</p> <p>5 preferred embodiment of the patent; is that correct? I 11:10:54</p> <p>6 mean it's here in your report. Or your declaration,</p> <p>7 rather.</p> <p>8 A. Which one of these are you on now?</p> <p>9 Q. We're on -- Exhibit 5 is your report, paragraph 7</p> <p>10 that you have right there. We're in the plaintiff's 11:11:31</p> <p>11 brief now, I believe; right?</p> <p>12 A. The only difference -- I'm sorry.</p> <p>13 Q. I can reask the question, if you want.</p> <p>14 A. Ask the question, because I'm afraid I'm not...</p> <p>15 Q. No problem. Absolutely. 11:12:08</p> <p>16 So we're looking at your definition of</p> <p>17 paragraph 7, and you've supplied this cite to the second</p> <p>18 sentence of paragraph 7. That's column 7, line 21 of</p> <p>19 the patent at issue. I read that line to you, line 21, 11:12:27</p> <p>20 for context. The technology disclosed herein will now</p> <p>21 be described in -- that's line 20. Line 21 states:</p> <p>22 Detail with reference to at least one preferred</p> <p>23 embodiment. And that's line 21.</p> <p>24 A. Yes.</p> <p>25 Q. So your opinion is that front plate, top side, 11:12:43</p> <p style="text-align: right;">Page 116</p>
<p>1 BY MR. HOGAN:</p> <p>2 Q. Finished?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Those two sentences there, you're stating why you</p> <p>5 think defendants' construction is wrong; right? 11:09:46</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. So the first two sentences of paragraph 7</p> <p>8 talk about plaintiff's construction, the second two</p> <p>9 sentences of paragraph 7 talk about defendants'</p> <p>10 construction; right? 11:10:01</p> <p>11 A. Uh-huh.</p> <p>12 Q. So this is the only rationale you provide in the</p> <p>13 first two sentences of paragraph 7 about the meaning of</p> <p>14 that claim term; right?</p> <p>15 A. Uh-huh. 11:10:10</p> <p>16 Q. No further description, no explanation, just the</p> <p>17 two sentences; right?</p> <p>18 A. Right.</p> <p>19 Q. And then you reference column 7, line 21. Turn</p> <p>20 to column 7, line 21, please. And that's -- the middle 11:10:22</p> <p>21 of the paragraph, that says -- I'll read the first</p> <p>22 sentence: The technology disclosed herein will now be</p> <p>23 described in -- that's Line 20. Line 21 -- in detail</p> <p>24 with reference to at least one preferred embodiment.</p> <p>25 That's line 21; right? 11:10:46</p> <p style="text-align: right;">Page 115</p>	<p>1 the construction of that is based on the one preferred</p> <p>2 embodiment in the patent; is that right?</p> <p>3 A. No, it's because there is one preferred</p> <p>4 embodiment. There's other embodiments, and that's --</p> <p>5 that has been what has helped me understand that there 11:13:04</p> <p>6 could be more embodiments, more finger holes in that</p> <p>7 area, to expand.</p> <p>8 I, frankly, have very little difference of</p> <p>9 opinion between these two constructions, except that</p> <p>10 yours says user-facing surface of the front plate, and 11:13:25</p> <p>11 ours refers to surfaces.</p> <p>12 Q. That was actually as of a month ago, but be that</p> <p>13 as it may.</p> <p>14 A. This is my opinion.</p> <p>15 Q. That's your opinion, thank you. 11:13:43</p> <p>16 Multiple embodiments. So putting out of</p> <p>17 your mind the seven-slide embodiment, because you know</p> <p>18 in the figures it describes -- I'll just leave it to the</p> <p>19 figures. In the 358 patent there's only one embodiment</p> <p>20 shown, and it has four slides; right? 11:13:59</p> <p>21 A. (No audible answer.)</p> <p>22 Q. And all the drawings in the patent are different</p> <p>23 perspectives of the same four-slide device, aren't they?</p> <p>24 A. Uh-huh, yes. The patent is extremely clear that</p> <p>25 there could be more. 11:14:14</p> <p style="text-align: right;">Page 117</p>

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<p>1 Q. More embodiments. For example, there could be</p> <p>2 Braille indicators; right?</p> <p>3 A. But they also indicate, I think -- I recall they</p> <p>4 actually say they go to more numbers. They name numbers</p> <p>5 of buttons, 1, 2, 3, 4, 5, 6. 11:14:28</p> <p>6 Q. You're referring to protrusions and pinholes.</p> <p>7 There's no numbered buttons in the claims.</p> <p>8 A. You may be right, I may be wrong.</p> <p>9 Q. Look at claim 2, column 8, about a third of the</p> <p>10 way down. 11:14:48</p> <p>11 A. I'm sorry?</p> <p>12 Q. I was pointing to claim 2. Where are you?</p> <p>13 A. In column 6, line 18, the front of the plate may</p> <p>14 have visual and/or tactile indicators corresponding to</p> <p>15 each slide to indicate first dosage, second dosage, 11:15:04</p> <p>16 third dosage, fourth dosage, et cetera.</p> <p>17 Q. So you're interpreting that to give more slides?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So based on that -- there's nothing shown</p> <p>20 in the patent, but based on that line, you think there's 11:15:18</p> <p>21 more embodiments disclosed by the patent; is that right?</p> <p>22 A. Yes, plus the numerous references in the patent</p> <p>23 to -- that this is only one of many possible</p> <p>24 embodiments.</p> <p>25 Q. Do you know of any more references to embodiments 11:15:31</p> <p style="text-align: right;">Page 118</p>	<p>1 I think you testified earlier 110 and 120 are different,</p> <p>2 110 and 140 are different; right? They're not the same?</p> <p>3 A. Yeah, they're different. They're different</p> <p>4 surfaces.</p> <p>5 Q. But 115 is different? 11:17:31</p> <p>6 A. Yeah, so that's why I say surfaces.</p> <p>7 Q. Surfaces, that's not a typo, that's intentional,</p> <p>8 surfaces, plural?</p> <p>9 A. Yes.</p> <p>10 Q. So your interpretation of front plate, top side, 11:17:41</p> <p>11 singular, encompasses plural; right?</p> <p>12 A. Yes.</p> <p>13 Q. Based on column 7, line 21? That's the cite you</p> <p>14 give here.</p> <p>15 A. Well, it's based more on looking at the 11:17:56</p> <p>16 illustrations.</p> <p>17 Q. None of which you cite in your declaration.</p> <p>18 A. Other than saying based on the patent, context of</p> <p>19 the patent.</p> <p>20 Q. None of which you cited here, just column 7, 11:18:07</p> <p>21 line 21; right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Do you think this claim term, front plate,</p> <p>24 top side, has a unique or uncommon meaning in the</p> <p>25 patent? 11:18:20</p> <p style="text-align: right;">Page 120</p>
<p>1 other than the one you showed me?</p> <p>2 A. No, I don't have a list of them.</p> <p>3 Q. And there's none cited in your declaration</p> <p>4 either?</p> <p>5 A. No. 11:15:44</p> <p>6 Q. Just the one in line 21, column 6.</p> <p>7 As stated in paragraph 7, you considered the</p> <p>8 patent and the file history in your opinion of the</p> <p>9 meaning of this claim term; right?</p> <p>10 A. Yes. 11:15:59</p> <p>11 Q. Anything else that you considered?</p> <p>12 A. Again, I think the term surfaces is consistent</p> <p>13 with my interpretation of what's labeled 110 and 115,</p> <p>14 being in this embodiment at different heights, but then</p> <p>15 also, if the user facing surface of the front plate, top 11:16:28</p> <p>16 side, is -- in actuality, if a person is looking</p> <p>17 directly at -- straight at the device with not even the</p> <p>18 slightest bit of turn, they're going to see the face</p> <p>19 plate and see those three surfaces.</p> <p>20 But if they're holding it in any other kind 11:17:00</p> <p>21 of ordinary way, they're going to see these surfaces,</p> <p>22 they're going to see that surface, they're going to see</p> <p>23 that surface, and all those. So just technically, they</p> <p>24 would see surfaces.</p> <p>25 Q. I'm sorry. So you keep aligning 110 and 115, but 11:17:15</p> <p style="text-align: right;">Page 119</p>	<p>1 A. Well, I think there would be different ways of</p> <p>2 describing it, but I'm comfortable with it.</p> <p>3 Q. Okay. So the answer to my question was yes;</p> <p>4 right?</p> <p>5 A. The answer to your question is? 11:18:44</p> <p>6 Q. It's actually no. Does the patent give the claim</p> <p>7 term a unique or uncommon meaning?</p> <p>8 A. It gives it a meaning that I can accept.</p> <p>9 Q. But is it unique and uncommon?</p> <p>10 A. Unique and uncommon sounds to me like the same 11:19:00</p> <p>11 thing.</p> <p>12 Q. Is it one or the other? Is it unique? Is it</p> <p>13 uncommon?</p> <p>14 A. If it's unique, it must, by definition, be</p> <p>15 uncommon. 11:19:12</p> <p>16 Q. That's not what I'm asking, though, is it?</p> <p>17 A. Then I can't answer the question.</p> <p>18 Q. Is the meaning of the claim term unique?</p> <p>19 A. I can't answer that.</p> <p>20 Q. You don't know? 11:19:27</p> <p>21 A. I don't know.</p> <p>22 Q. It's not the plain, ordinary meaning?</p> <p>23 A. I think it's the plain, ordinary meaning.</p> <p>24 Q. So it's the plain, ordinary meaning, but you</p> <p>25 can't tell me whether it's unique, the meaning of that 11:19:37</p> <p style="text-align: right;">Page 121</p>

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<p>1 claim term. Is that your testimony, sir?</p> <p>2 A. I can tell you that it's my -- for me, it's a</p> <p>3 plain, ordinary, understandable meaning.</p> <p>4 Q. Okay. And you can understand that clear meaning</p> <p>5 from reading the patent and file history? 11:19:53</p> <p>6 A. Yes.</p> <p>7 Q. Nothing else, no publications, no articles, no</p> <p>8 treatises; right?</p> <p>9 A. No.</p> <p>10 Q. One follow-up question. You can refer to 11:20:00</p> <p>11 figure 1 if you need to. So your opinion in the meaning</p> <p>12 of front plate, top side, that includes element 120,</p> <p>13 sides, plural; right? That includes that part?</p> <p>14 A. No, it does not include 120.</p> <p>15 Q. So is your construction, this construction 11:20:59</p> <p>16 surfaces, plural, the front plate, is that incorrect?</p> <p>17 A. The front plate, top side, would be, in my</p> <p>18 understanding, this area, this area, and this area. I'm</p> <p>19 pointing to what's labeled 110, 140 -- but not 1 -- 115,</p> <p>20 and the unnumbered surface at the other end. 11:21:28</p> <p>21 Q. Do you draw a distinction between looking at the</p> <p>22 device at an angle or head on, in how you consider the</p> <p>23 meaning of front plate, top side?</p> <p>24 A. Yes, straight on.</p> <p>25 Q. Straight on. 11:22:05</p> <p style="text-align: right;">Page 122</p>	<p>1 it quickly.</p> <p>2 Q. So generally doesn't describe angle. You're</p> <p>3 looking at the top and you can see the side as well.</p> <p>4 That's not included there?</p> <p>5 A. Generally, you would look at the front surface. 11:23:36</p> <p>6 You would see the side surfaces.</p> <p>7 Q. You would see the side surfaces if you look at</p> <p>8 the front?</p> <p>9 A. Well, I think we're getting into the -- maybe an</p> <p>10 issue of usability, user interaction. Do I think, when 11:23:52</p> <p>11 a person is holding that vial and that device in their</p> <p>12 hand, looking at it, I think what they see, what they</p> <p>13 are perceiving, are the front surfaces. I don't think,</p> <p>14 in ordinary use, they're really seeing the sides. It's</p> <p>15 not registering. 11:24:17</p> <p>16 Q. So if this is the device, right, and this is the</p> <p>17 strip here, generally, visible to a normal user is</p> <p>18 looking dead on. That's excluded, looking at an angle,</p> <p>19 seeing 120, and 110, and 115; right?</p> <p>20 A. Right. 11:24:34</p> <p>21 Q. So 15 degrees changes your construction?</p> <p>22 A. It may change what is visible, but it may not</p> <p>23 change so much what you're seeing, what you're looking</p> <p>24 at.</p> <p>25 Q. Visible versus looking at? 11:24:46</p> <p style="text-align: right;">Page 124</p>
<p>1 A. Well, it really doesn't matter. It's what one</p> <p>2 would see looking at it straight on.</p> <p>3 Q. But not at an angle?</p> <p>4 A. No.</p> <p>5 Q. No. When you use surfaces, you mean 110, 115 is 11:22:21</p> <p>6 encompassed in the meaning of the front plate, top side?</p> <p>7 A. Yes. I would not construe 120 as being the top</p> <p>8 side. And in this embodiment there's another edge</p> <p>9 shown. There's another --</p> <p>10 Q. Okay. 11:22:51</p> <p>11 A. There's another unnumbered edge there that I</p> <p>12 will --</p> <p>13 Q. That's essentially the corollary to 110?</p> <p>14 A. 110, on top side.</p> <p>15 Q. Okay. Do you have plaintiff's brief in front of 11:23:03</p> <p>16 you?</p> <p>17 A. Yes.</p> <p>18 Q. Look at the construction, second paragraph down:</p> <p>19 Front plate, top side, means the surface of the front</p> <p>20 plate generally visible to the user during normal use? 11:23:16</p> <p>21 A. Uh-huh.</p> <p>22 Q. So generally, is it too broad, then, front on</p> <p>23 means front, heads up, which is at an angle? You said</p> <p>24 at an angle --</p> <p>25 A. I think the term generally makes it -- describes 11:23:25</p> <p style="text-align: right;">Page 123</p>	<p>1 A. Yes. We're parsing terms, I think.</p> <p>2 Q. That's claim construction. One second. So --</p> <p>3 and you disagree with defendants' construction?</p> <p>4 A. Well --</p> <p>5 Q. Because you're saying front plate, top side, not 11:25:27</p> <p>6 limited to the user-facing surface of the front plate;</p> <p>7 right?</p> <p>8 A. I think the term surface limits it.</p> <p>9 That's their, can be more than one.</p> <p>10 Q. Let's go to paragraph 8 of your declaration, sir. 11:26:04</p> <p>11 Probably turn to page 7 of plaintiff's brief. That's</p> <p>12 the same claim term. You got that?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Paragraph 8 consists of two sentences; am I</p> <p>15 right? 11:26:29</p> <p>16 A. Uh-huh.</p> <p>17 Q. The first one reads: In the concept of the</p> <p>18 patent and the file history, the term face plate means a</p> <p>19 portion of the front plate, top side, facing the user</p> <p>20 during normal use. Although the face plate may include 11:26:40</p> <p>21 openings through which slides protrude, nothing in the</p> <p>22 patent requires the face plate to, quote, house slide</p> <p>23 bases, end quote. Did I read that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Do you have any other rationale or 11:26:56</p> <p style="text-align: right;">Page 125</p>

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<p>1 explanation to add to that paragraph 8 for the meaning 2 of the claim term face plate? 3 A. Yeah, because the face plate, because they have 4 numbered it individually, I think my interpretation of 5 it is that it refers only to that surface. It does not 11:27:29 6 refer to the openings. 7 Q. Okay. 8 A. The openings are, in my mind, a separate claim. 9 Q. You mean the finger button holes; right? 10 A. Yes. 11:27:51 11 Q. Just to be clear, so in your paragraph 8 here you 12 make no specific references to patent style history; 13 right? No lines or pages or columns; correct? 14 A. No. 15 Q. And you don't cite specifically to any 11:28:19 16 publications or articles or treatises or scholarly 17 publications, do you? 18 A. No. 19 Q. Do you think the term face plate is unique, as 20 used in the patent? 11:28:38 21 A. I think it's -- in my mind it's unique in this 22 particular application, because it differentiates that 23 area of the -- of 110, the front plate body. 24 Q. Do you know the meaning of front -- I'm sorry, I 25 lost my place. 11:29:10 Page 126</p>	<p>1 page 2 of 6 to 3 of 6. Actually, I'm wrong. It's the 2 bottom of page 2 of 6. See that? 3 A. Yes. 4 Q. If you want to get there, in the plaintiff's 5 brief it's also on page 8 of 15, if you want to 11:44:00 6 reference that. 7 Okay. Paragraph 8 of your declaration 8 contains, looks like two sentences; right? 9 A. Uh-huh. 10 Q. First one reads: In the context of the patent 11:44:19 11 and file history, the term face plate means a portion of 12 the front plate, top side, facing the user -- beg your 13 pardon, we just did that. Bad question. That was 14 paragraph 8. We're on paragraph 9. I'm sorry. Start 15 over. 11:44:39 16 A. We can go back to that, if you want. 17 Q. It was long enough the first time. 18 Let's go to paragraph 9. Paragraph 9 is at the 19 bottom of page 2. See that? 20 A. Yes. 11:44:51 21 Q. Okay. And that's two sentences. See that? 22 A. Uh-huh. 23 Q. The first sentences in paragraph 9 reads: In the 24 context of the patent, file history, the term slide gate 25 cavity means an area of the front plate bottom side 11:45:01 Page 128</p>
<p>1 Do you think the meaning of face plate is 2 clear, after considering the patent and file history? 3 I'm sorry, that's a whole different question. I'll ask 4 you again. I'm sorry, bad question. 5 Do you think the meaning of face plate is 11:29:31 6 clear, after considering the patent and file history? 7 A. Yes, it's clear to me. 8 MR. HOGAN: We've been -- how long have we 9 been going? 10 THE VIDEOGRAPHER: Three hours. 11:29:57 11 MR. HOGAN: Since our short break I meant, 12 I'm sorry. 13 THE VIDEOGRAPHER: 9:51 we came back on. 14 MR. HOGAN: Do you want to do a short break, 15 bio break? 11:30:12 16 THE WITNESS: Sure. 17 MR. HOGAN: Let's take a short break, 18 please. 19 THE VIDEOGRAPHER: Off the record at 11:30. 20 (A recess ensued.) 11:43:36 21 THE VIDEOGRAPHER: We're back on the record 22 at 11:43. 23 BY MR. HOGAN: 24 Q. Okay. Looking at your declaration, sir, let's go 25 to paragraph 9, at the bottom of page -- goes from 11:43:45 Page 127</p>	<p>1 across which the slide travels, period. There's a cite 2 there, it says see, e.g., figure 5, numeral 160. See 3 that? 4 A. Uh-huh. 5 Q. The next sentence reads: Contrary to defendants' 11:45:12 6 proposed construction, the slide gate cavity is not 7 limited to, quote, correlating with the face plate. See 8 that? 9 A. Yes. 10 Q. Okay. Figure 5, numeral 160. 11:45:27 11 A. Yes. 12 Q. You got that? 13 A. Yes. 14 Q. Okay. So you cite figure 5, numeral 160 in 15 support of your opinion? 11:45:39 16 A. Uh-huh. 17 Q. Nothing else is specifically cited, no page, no 18 columns, no lines; right? 19 A. Right. 20 Q. You cite no publications, no treatises, no 11:45:45 21 scholarly articles; right? 22 A. Correct. 23 Q. The second sentence is essentially you 24 disagreeing, saying why you think defendants' 25 construction is wrong? 11:46:04 Page 129</p>

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<p>1 A. Right.</p> <p>2 Q. This is all the rationale and explanation you</p> <p>3 have for the meaning of slide gate cavity; right? As</p> <p>4 put forth in your declaration, that's it; right?</p> <p>5 A. Yes. 11:46:20</p> <p>6 Q. Does the patent give an uncommon meaning to the</p> <p>7 claim term slide gate cavity?</p> <p>8 A. Well, I think it's -- I don't think it's a very</p> <p>9 good term for it, because the term cavity represents</p> <p>10 something that is enclosed, and -- and if that's the 11:47:02</p> <p>11 case, then it should also include the sides, because --</p> <p>12 the slide gate cavity, in my feeling, is that space</p> <p>13 that's created not only by the surface that the 160 is</p> <p>14 pointing to, but also component 150, which is -- I have</p> <p>15 to be careful with my numbers -- slide gate, and there 11:47:53</p> <p>16 is actually -- my best reading of the numbers is that</p> <p>17 there is a slide gate type structure that surrounds each</p> <p>18 of these areas, defined as slide gate cavity.</p> <p>19 Now, I also -- my interpretation also is</p> <p>20 that 130, the finger hole buttons, are part of that 11:48:22</p> <p>21 cavity.</p> <p>22 Q. Okay. And none of the explanation you just gave</p> <p>23 me is in your declaration, is it? It's not there, is</p> <p>24 it, sir?</p> <p>25 A. Well, I think it is. I say -- 11:48:46</p> <p style="text-align: right;">Page 130</p>	<p>1 A. Well, technically speaking, the -- I think the</p> <p>2 finger hole button also is part of that cavity because</p> <p>3 it provides limitation on how far the slide can travel</p> <p>4 in the other direction. And the cavity, slide gate</p> <p>5 cavity, to me means a cavity in which the slide -- the 11:50:20</p> <p>6 finger button can slide. Now I'm done.</p> <p>7 Q. I think I asked you earlier this morning, sir,</p> <p>8 your book is very popular, very well known, is used as a</p> <p>9 basis for teaching undergraduates design, the precision</p> <p>10 of using markers to draw images. We talked about that 11:50:43</p> <p>11 earlier, didn't we?</p> <p>12 A. Uh-huh.</p> <p>13 Q. And one of the things you've espoused throughout</p> <p>14 your career is detail and precision in drawings; right?</p> <p>15 A. Yes. 11:50:54</p> <p>16 Q. And 150, on figure 5, slide gate -- I'm sorry,</p> <p>17 160, slide gate cavity, does that point to the slide</p> <p>18 gate, 150?</p> <p>19 A. No.</p> <p>20 Q. No, it doesn't. Does it point to the finger 11:51:04</p> <p>21 button hole, 130?</p> <p>22 A. No.</p> <p>23 Q. Does it point to the buttons, finger buttons,</p> <p>24 with a number, 250? It doesn't, does it?</p> <p>25 A. It points to a surface. Yes, that calls it a 11:51:15</p> <p style="text-align: right;">Page 132</p>
<p>1 Q. In the two sentences of that section of your</p> <p>2 declaration, where you just --</p> <p>3 MR. PEELER: Were you finished with your</p> <p>4 answer?</p> <p>5 THE WITNESS: No, I can continue. 11:49:01</p> <p>6 BY MR. HOGAN:</p> <p>7 Q. You didn't answer my question. The explanation</p> <p>8 you just gave me about your interpretation of slide gate</p> <p>9 cavity is not contained in the two sentences provided in</p> <p>10 your declaration, is it? 11:49:13</p> <p>11 A. I think you asked me if that was a good, accurate</p> <p>12 definition for that term.</p> <p>13 Q. I asked you if it was uncommon, and you gave me</p> <p>14 some information, trying to explain why you thought it</p> <p>15 was a little bit unusual. 11:49:26</p> <p>16 A. Confusing.</p> <p>17 Q. So you think that term is confusing?</p> <p>18 A. Somewhat confusing.</p> <p>19 Q. So you wouldn't construe that term according to</p> <p>20 the plain, ordinary meaning, would you? 11:49:35</p> <p>21 A. Well, I can give that ordinary meaning and</p> <p>22 understanding by looking at what's around it.</p> <p>23 Q. And you just told me that the slide gate cavity</p> <p>24 includes the slide gate, 130 -- I'm sorry, slide gate,</p> <p>25 150, and the slide gate cavity, 130; is that correct? 11:49:56</p> <p style="text-align: right;">Page 131</p>	<p>1 cavity.</p> <p>2 Q. I think you testified earlier, we were talking</p> <p>3 about the face plate. You said that face plate is</p> <p>4 raised to create space for the slide gate cavity.</p> <p>5 Remember that? 11:51:36</p> <p>6 A. Yes.</p> <p>7 Q. Wouldn't you agree, sir, the hollow area covering</p> <p>8 of the face plate is the slide gate cavity?</p> <p>9 A. It's part of it. I think without further</p> <p>10 definition, sliding of the finger buttons would not be 11:51:47</p> <p>11 precise and controllable.</p> <p>12 Q. So looking at your declarations, also in</p> <p>13 plaintiff's brief, but we can look at your declaration,</p> <p>14 you write: The term slide gate cavity means an area of</p> <p>15 the front plate, bottom side, across which the slide 11:52:13</p> <p>16 travels; right?</p> <p>17 A. Yes.</p> <p>18 Q. Is this a physical structure?</p> <p>19 A. Is the slide gate cavity a physical structure?</p> <p>20 Yes. 11:52:26</p> <p>21 Q. It's not a space bounded by a structure?</p> <p>22 A. It's pointing to a surface. Surface is a</p> <p>23 structure.</p> <p>24 Q. Have you ever had a cavity in your tooth?</p> <p>25 A. Yes. 11:52:47</p> <p style="text-align: right;">Page 133</p>

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<p>1 Q. Is it enclosed or is it open?</p> <p>2 A. It's closed now.</p> <p>3 Q. By the dentist; right?</p> <p>4 A. You know, this term cavity and channel have both</p> <p>5 been, in my mind, not clearly defined by the patent. 11:53:01</p> <p>6 Q. So they're unclear. They're confusing?</p> <p>7 A. They're a little bit confusing.</p> <p>8 Q. They're --</p> <p>9 A. I think --</p> <p>10 Q. Right? 11:53:16</p> <p>11 A. But I'm content with my interpretation of them.</p> <p>12 I clearly see the area that is defining the movement</p> <p>13 of -- defining and controlling the movement of the</p> <p>14 finger buttons.</p> <p>15 Q. So a cavity is controlling the movement of the 11:53:32</p> <p>16 finger buttons; is that your testimony?</p> <p>17 A. Partially controlling it.</p> <p>18 Q. Partially controlling it.</p> <p>19 A. It's also -- the back plate is very much a part</p> <p>20 of that, because without it the buttons would not be 11:53:45</p> <p>21 able to be retained in a cavity.</p> <p>22 MR. HOGAN: Do you have the definition of</p> <p>23 cavity you provided this morning, Charlie? I didn't get</p> <p>24 a hard copy. I have it on my phone, but it's hardly an</p> <p>25 exhibit. 11:54:05</p> <p style="text-align: right;">Page 134</p>	<p>1 The plaintiff's position in this case is</p> <p>2 plain, ordinary meaning for this term, is it not?</p> <p>3 MR. PEELER: Object to the characterization</p> <p>4 of the plaintiff's position.</p> <p>5 BY MR. HOGAN: 11:55:52</p> <p>6 Q. Take a look at the plaintiff's brief. It's right</p> <p>7 by your left hand, right here. Are you on page 8.</p> <p>8 A. Yes.</p> <p>9 Q. Plaintiff's construction, I'm reading down that</p> <p>10 column. It states, and correct me if I'm wrong, it 11:56:00</p> <p>11 says: This term should be construed according to the</p> <p>12 ordinary and customary meaning. Did I read that right?</p> <p>13 A. Yes.</p> <p>14 Q. Then below that it says: Slide gate cavity means</p> <p>15 an area of the front plate, bottom side, across which 11:56:11</p> <p>16 the slide travels.</p> <p>17 A. Yes.</p> <p>18 Q. The definition you provided us right now, and</p> <p>19 counsel gave us this morning before the deposition, the</p> <p>20 definition is a hollow place, a hollow hole, pocket; 11:56:22</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. When did you first see the definition of cavity</p> <p>24 in this Merriam Webster's dictionary in terms of this</p> <p>25 case? 11:56:43</p> <p style="text-align: right;">Page 136</p>
<p>1 MR. PEELER: I know I said that I did, but I</p> <p>2 don't know if I did that.</p> <p>3 MR. HOGAN: Do you have them, sir?</p> <p>4 THE WITNESS: I have them.</p> <p>5 BY MR. HOGAN: 11:54:17</p> <p>6 Q. Fantastic. Can I see them and take these pages</p> <p>7 as well? These pages are all from the same dictionary;</p> <p>8 right?</p> <p>9 A. No. One of them is from an online dictionary.</p> <p>10 Q. Okay. Let's see if I can figure those out. They 11:54:35</p> <p>11 look the same to me, but they look like they're from the</p> <p>12 same book.</p> <p>13 A. No, I'm sorry, they're all from the Webster.</p> <p>14 Q. This is Webster's edition, copyrighted 1960, at</p> <p>15 the top. Are you with me? 11:54:57</p> <p>16 A. Yes.</p> <p>17 Q. Give me one second. In this exhibit you have</p> <p>18 here, page 133, and I'll mark this, highlighted is the</p> <p>19 word cavity. Did you highlight that?</p> <p>20 A. Uh-huh. 11:55:16</p> <p>21 Q. Definition says a hollow place, a hollow hole or</p> <p>22 pocket. And you relied on this in forming your opinion?</p> <p>23 A. Partially.</p> <p>24 Q. Partially. The dictionary definition -- let me</p> <p>25 back up. 11:55:36</p> <p style="text-align: right;">Page 135</p>	<p>1 A. I think when I was doing my declaration.</p> <p>2 Q. So prior to or on the day of March 13th?</p> <p>3 A. Yes.</p> <p>4 Q. So you had this definition of cavity in front of</p> <p>5 you, but your opinion is as stated here in your 11:56:59</p> <p>6 declaration; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And I think you've added to that the explanation,</p> <p>9 which is not in your declaration, that includes</p> <p>10 structure such as the slide gate and the finger button 11:57:14</p> <p>11 hole; is that right?</p> <p>12 A. Uh-huh. And the back plate.</p> <p>13 Q. And the back plate.</p> <p>14 Anything else you want to add to your</p> <p>15 construction today? 11:57:24</p> <p>16 A. I'm not sure what you're asking me.</p> <p>17 Q. So you've added an explanation to your</p> <p>18 construction of slide gate cavity.</p> <p>19 MR. PEELER: Objection; mischaracterization.</p> <p>20 BY MR. HOGAN: 11:57:42</p> <p>21 Q. You stated today it includes the slide gate and</p> <p>22 the finger button hole, which is not in your</p> <p>23 declaration; correct?</p> <p>24 A. I told you that in context of your question as to</p> <p>25 whether or not the term cavity had unique meaning, and 11:57:51</p> <p style="text-align: right;">Page 137</p>

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<p>1 explained to you that it had some ambiguity to it, but</p> <p>2 that I was satisfied with the term cavity because of the</p> <p>3 space that is created with this surface defined as 160,</p> <p>4 with the slide gate, defined by 130, by the back plate,</p> <p>5 310, and by the finger button holes, 130. Collectively 11:58:17</p> <p>6 they form, in my mind, a cavity.</p> <p>7 Q. You used space just now. Cavity or a space?</p> <p>8 A. A cavity or space. I think a space can be a</p> <p>9 cavity.</p> <p>10 MR. HOGAN: I'm going to make this exhibit 11:58:59</p> <p>11 Kemnitzer K-8.</p> <p>12 (Exhibit No. 8 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. HOGAN:</p> <p>15 Q. Moving on. Page 3 of 6 of your declaration, 11:59:27</p> <p>16 paragraph 10. And so this claim term -- and it's</p> <p>17 actually page 8 of 15 to 9 of 15, and to 10 of 15, also.</p> <p>18 It's the plaintiff's brief for the construction</p> <p>19 discussed by the plaintiff. Your declaration is page 3</p> <p>20 to 4, Paragraphs 10 and 11. Okay? If that wasn't 11:59:51</p> <p>21 clear, I apologize. Let's try it again. Ignore that.</p> <p>22 Let's look at paragraph 10 of your</p> <p>23 declaration. We're looking at page 8 to 9 of the</p> <p>24 plaintiff's brief.</p> <p>25 A. Yes. 12:00:06</p> <p style="text-align: right;">Page 138</p>	<p>1 Q. So when you say "means," are you referring to the</p> <p>2 means plus function construction of patent law?</p> <p>3 A. I'm referring to the means of attaching one part</p> <p>4 to another.</p> <p>5 Q. Okay. Let's do this first. Look at column 7, 12:02:03</p> <p>6 Line 64, over to Column 8, line 12. I'm not going to</p> <p>7 ask you to read that, that's a pretty lengthy citation.</p> <p>8 Are you with me on column 7?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Every U.S. patent has a caveat section like this, 12:02:24</p> <p>11 before the claims begin; right?</p> <p>12 A. Right.</p> <p>13 Q. And every U.S. patentee wants a patent that can</p> <p>14 be construed as broadly as possible; right?</p> <p>15 A. Yes. 12:02:42</p> <p>16 Q. Every U.S. patent has one of these. That's been</p> <p>17 my experience. Is that your experience as well?</p> <p>18 A. Pretty much so.</p> <p>19 Q. Okay. Do you -- this section -- this citation,</p> <p>20 I'm sorry, column 7, column 8, this is a general caveat 12:03:03</p> <p>21 saying there could be other -- it says other</p> <p>22 embodiments, these are exemplary, et cetera; right? I'm</p> <p>23 paraphrasing.</p> <p>24 A. Yes, I understand.</p> <p>25 Q. Okay. No other structures for securing a back 12:03:18</p> <p style="text-align: right;">Page 140</p>
<p>1 Q. Beg your pardon for the interruption, sir.</p> <p>2 Paragraph 10 is a longer paragraph. It looks like</p> <p>3 there's one, two, three, four, five sentences there.</p> <p>4 I'm not going to read them all. It's your declaration.</p> <p>5 I assume you know what the content of paragraph 10 is. 12:00:49</p> <p>6 The first sentence states: In the context</p> <p>7 of the patent and file history, the term plurality of</p> <p>8 pinholes disposed in the front plate, bottom side, is</p> <p>9 self-explanatory. The next sentence, next two</p> <p>10 sentences, you provide some explanation of that; right? 12:01:06</p> <p>11 A. Yes.</p> <p>12 Q. The third sentence, one, two, three -- beg your</p> <p>13 pardon, fourth sentence, it says: One means disclosed</p> <p>14 in the patent to fix the front plate and back plate is</p> <p>15 pinhole and protrusion snap fit; right? 12:01:24</p> <p>16 A. Uh-huh.</p> <p>17 Q. Next sentence reads: One of ordinary skill in</p> <p>18 the art will appreciate that there are multiple other</p> <p>19 means available to secure the front plate and back plate</p> <p>20 together. 12:01:39</p> <p>21 A. Yes.</p> <p>22 Q. Then there's a citation there to column 7, Line</p> <p>23 64, column 8, line 12. We'll get to that. The last</p> <p>24 sentence reads: A snap fit is one means for doing so.</p> <p>25 A. Yes. 12:01:45</p> <p style="text-align: right;">Page 139</p>	<p>1 plate to the front plate are stated in this section, are</p> <p>2 they?</p> <p>3 A. Not specifically.</p> <p>4 Q. Not specifically.</p> <p>5 Are you familiar with -- I think I asked you 12:03:30</p> <p>6 this; I'll ask more clearly this time. Are you familiar</p> <p>7 with means plus function under 35 USC, section 112,</p> <p>8 paragraph 6?</p> <p>9 A. No.</p> <p>10 Q. You never heard of that? 12:03:40</p> <p>11 A. No.</p> <p>12 Q. So you have no understanding at all of that</p> <p>13 statutory construction?</p> <p>14 A. I answered that question.</p> <p>15 Q. I'm sorry, I misspoke. You have no understanding 12:03:50</p> <p>16 at all of that statutory section; right?</p> <p>17 A. No.</p> <p>18 Q. In your declaration, sir, is it your opinion that</p> <p>19 the holes are structural or functional?</p> <p>20 A. They're both. 12:04:31</p> <p>21 Q. They're both. Same with the protrusions,</p> <p>22 structural and functional?</p> <p>23 A. They're structural. I'm not so sure that they're</p> <p>24 functional in terms of the use of the product. They</p> <p>25 hold the product together. 12:04:59</p> <p style="text-align: right;">Page 141</p>

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<p>1 Q. Snap fitting. Structural or functional?</p> <p>2 A. Both.</p> <p>3 Q. Both.</p> <p>4 Are other means of connecting -- sorry. Are</p> <p>5 other ways of connecting the front plate to the back 12:05:17</p> <p>6 plate stated in the patent specifically?</p> <p>7 A. Certainly inasmuch as the paragraph that you have</p> <p>8 just referred to, and I believe there are some other</p> <p>9 spots. Without going through the patent, I think that</p> <p>10 there was some other mention of a embodiment of this, 12:05:40</p> <p>11 that this is one way of doing this, and I believe it</p> <p>12 refers to it in the notes.</p> <p>13 Q. Paragraph 10, I read to you several sentences</p> <p>14 from paragraph 10. We looked at the citation. There's</p> <p>15 no other citation, specific citation of the patent 12:06:01</p> <p>16 without history provided here, other than what's in</p> <p>17 paragraph 10; right?</p> <p>18 A. No, just a reference to myself as a designer,</p> <p>19 understanding that there are many ways to accomplish the</p> <p>20 connection between the front plate and the back plate 12:06:19</p> <p>21 beyond the one that is listed as a preferred embodiment.</p> <p>22 Q. I understand that's your testimony just now. No</p> <p>23 other references specifically to the patent or the file</p> <p>24 history by line, by page number, by paragraph were</p> <p>25 provided here; is that correct? 12:06:36</p> <p style="text-align: right;">Page 142</p>	<p>1 A. No.</p> <p>2 Q. And there's one orientation claimed in the</p> <p>3 patent; right?</p> <p>4 A. Yes.</p> <p>5 Q. The only thing claimed in Claim 1 is snap 12:08:53</p> <p>6 fitting; right?</p> <p>7 A. Is what fitting?</p> <p>8 Q. Snap fitting.</p> <p>9 A. Snap fitting, yes.</p> <p>10 Q. I think we can move -- 12:09:02</p> <p>11 A. But I think it might have also said that there</p> <p>12 are other ways of doing it. I'm fairly certain that I</p> <p>13 saw that somewhere.</p> <p>14 Q. They're not cited in your declaration in</p> <p>15 paragraph 10. If they occur to you today, before we 12:09:18</p> <p>16 break, before we finish, then please let me know. But I</p> <p>17 don't see any in the patent as I look at it, and I don't</p> <p>18 see any in your declaration either. So if we missed it,</p> <p>19 I'd be happy to hear it. But being that -- you said 12:09:34</p> <p>20 there are other ways you could put these two things</p> <p>21 together, but they're not claimed; right?</p> <p>22 A. Right.</p> <p>23 Q. They're not claimed as snap fitting; right?</p> <p>24 A. Right. And snap fitting can be done in other</p> <p>25 ways. 12:09:47</p> <p style="text-align: right;">Page 144</p>
<p>1 A. No.</p> <p>2 Q. No publications, no scholarly articles, no</p> <p>3 treatises?</p> <p>4 A. No.</p> <p>5 Q. Not even a Kemnitzer publication to explicate 12:06:43</p> <p>6 your understanding of design; right? Nothing like that?</p> <p>7 A. No.</p> <p>8 Q. Do you know the meaning of plurality of pinholes</p> <p>9 exposed in the front plate, bottom side? It's clear,</p> <p>10 since they're in the patent; right? Here you say 12:07:21</p> <p>11 they're self-explanatory.</p> <p>12 A. I think it's self-explanatory.</p> <p>13 Q. No uncommon usage in that phrase?</p> <p>14 A. I don't think so.</p> <p>15 Q. Do you have any other opinions as to the meaning 12:08:02</p> <p>16 of this claim, other than what's provided here in</p> <p>17 paragraph 10 of your declaration?</p> <p>18 A. Well, I think in terms of a designer of ordinary</p> <p>19 skill would see that it really makes no functional</p> <p>20 difference whether the pin protrusions are on the top 12:08:29</p> <p>21 side or the bottom side, and I think that there are many</p> <p>22 other ways of attaching the front side to the bottom</p> <p>23 side that are in common practice.</p> <p>24 Q. But no other ways are described in the patent,</p> <p>25 are they? 12:08:46</p> <p style="text-align: right;">Page 143</p>	<p>1 Q. That's your opinion; right?</p> <p>2 A. Well, it's a very informed opinion.</p> <p>3 Q. I understand.</p> <p>4 Let's look at paragraph 11, paragraph 11 of</p> <p>5 your declaration. This is directed to -- well, it's 12:09:55</p> <p>6 your declaration. You wrote it. I assume you're</p> <p>7 familiar with it. Paragraph 11 is directed to the term</p> <p>8 back plate having a plurality of protrusions disposed on</p> <p>9 the back plate, top side; right?</p> <p>10 A. Uh-huh. 12:10:20</p> <p>11 Q. So the first sentence of paragraph 11 states: In</p> <p>12 the context of patent and file history, the term back</p> <p>13 plate having a plurality of protrusions disposed on the</p> <p>14 back plate, top side, is likewise self-explanatory.</p> <p>15 A. Yes. 12:10:31</p> <p>16 Q. Is your testimony for the plurality of pinholes,</p> <p>17 I think that applies to the back plate protrusions;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Self-evident from the patent? 12:10:40</p> <p>21 A. Yes.</p> <p>22 Q. Plain, ordinary meaning of that claim term?</p> <p>23 A. Functionally speaking, there's no difference</p> <p>24 whether the pins are on the top or the bottom.</p> <p>25 Q. And the basis of your opinion is that plurality 12:10:54</p> <p style="text-align: right;">Page 145</p>

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<p>1 of protrusions is the same as the plurality of the</p> <p>2 pinholes?</p> <p>3 A. Same.</p> <p>4 Q. Same rationale; right? They're put together and</p> <p>5 are designed; right? 12:11:06</p> <p>6 A. Yes.</p> <p>7 Q. And again, we can belabor this or we can go</p> <p>8 through it quickly. So second to last paragraph, or</p> <p>9 starting sentence in paragraph 11, it's the top of</p> <p>10 page 4: One of ordinary skill in the art will 12:11:34</p> <p>11 appreciate that there are multiple other means available</p> <p>12 to secure the front plate and back plate together.</p> <p>13 A. Yes.</p> <p>14 Q. And you say, just like from paragraph 11, a snap</p> <p>15 fit is one means for doing so. As we talked about a 12:11:43</p> <p>16 second ago, the only means disclosed and claimed is a</p> <p>17 snap fitting, and the protrusions of the back side of</p> <p>18 the patent. That's all that's described; right?</p> <p>19 A. Yes.</p> <p>20 Q. We're on page 4 of 6 in your report. Do you have 12:12:13</p> <p>21 that?</p> <p>22 A. Yes.</p> <p>23 Q. You might want to have handy page 10 of</p> <p>24 plaintiff's brief, in case you need to refer to it.</p> <p>25 Page 10 of 15. 12:12:27</p> <p style="text-align: right;">Page 146</p>	<p>1 be comprised of, does it?</p> <p>2 A. It says is comprised of.</p> <p>3 Q. Right. The next sentence in your report says:</p> <p>4 An embodiment of the slide base is depicted at figure 5,</p> <p>5 numeral 210. See that in your report? 12:14:27</p> <p>6 A. Uh-huh.</p> <p>7 Q. Let's go to figure 5, 210. You got that figure 5</p> <p>8 in the patent?</p> <p>9 A. Yes.</p> <p>10 Q. That's the bottom view of the one embodiment of 12:14:40</p> <p>11 the device; correct?</p> <p>12 A. Uh-huh, yes.</p> <p>13 Q. And 210 points to what?</p> <p>14 A. The bottom of the finger button.</p> <p>15 Q. The slide base; right? 12:14:53</p> <p>16 A. The bottom of the slide base, yes.</p> <p>17 Q. And in fact, in the patent we just read, 210 is</p> <p>18 the slide base; right?</p> <p>19 A. Yes.</p> <p>20 Q. If you look at figure 1 of the patent. 12:15:13</p> <p>21 A. Got it.</p> <p>22 Q. See 210 there?</p> <p>23 A. Yes.</p> <p>24 Q. Points to the -- it's the slide base again. 210</p> <p>25 is the same number in both figures; right? 12:15:39</p> <p style="text-align: right;">Page 148</p>
<p>1 Okay. You prepared paragraph 12. I assume</p> <p>2 you read what's there. The first sentence reads: In</p> <p>3 the concept of the patent and file history, the term</p> <p>4 slide base means the base of the slide. See that?</p> <p>5 A. Uh-huh. 12:12:53</p> <p>6 Q. You say -- the next sentence reads: The patent</p> <p>7 describes slide assemblies comprised of several items,</p> <p>8 one of those being a slide base, column 7, line 41.</p> <p>9 So do you have paragraph 7, line 41?</p> <p>10 A. Paragraph 7, line 64? 12:13:31</p> <p>11 Q. Line 41 is what I'm looking at. Paragraph 12 in</p> <p>12 your declaration.</p> <p>13 A. Yeah.</p> <p>14 Q. I think you're in 13.</p> <p>15 A. Oh, sorry. 12:13:43</p> <p>16 Q. No problem. You got that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you have column 7, line 41?</p> <p>19 A. Yes.</p> <p>20 Q. I'll read it to you. It says: Each slide 12:13:52</p> <p>21 assembly, 200, is comprised of a slide base, 210, a</p> <p>22 slide base lock, 220, et cetera. That's what it says;</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. It does not say a slide base assembly, 200, may 12:14:04</p> <p style="text-align: right;">Page 147</p>	<p>1 A. Yes.</p> <p>2 Q. See where it points?</p> <p>3 A. Yes.</p> <p>4 Q. Where does it point to?</p> <p>5 A. Top surface. 12:15:44</p> <p>6 Q. Top surface. Okay.</p> <p>7 And then the last part of your</p> <p>8 declaration -- I know I'm jumping back and forth, beg</p> <p>9 your pardon. So we're back at your declaration,</p> <p>10 paragraph 12, the last sentence. I'll read that to you. 12:16:01</p> <p>11 It says: The patent claims recite that the slide</p> <p>12 base -- the slide assemblies are curved, but the</p> <p>13 definition of slide base, in and of itself, does not</p> <p>14 include this limitation. See column 8, lines 24-27.</p> <p>15 See that? 12:16:19</p> <p>16 A. Uh-huh.</p> <p>17 Q. Let's go to column 8, line 24-27. That's part of</p> <p>18 claim 1, is it not?</p> <p>19 A. Yes.</p> <p>20 Q. That reads: Wherein the front plate, the 12:16:30</p> <p>21 plurality of slide assemblies, the back plate, and the</p> <p>22 dosage indicator are curved and collectively form an</p> <p>23 assurance dosage strip for attachment to a medicine</p> <p>24 vial. It says curved; right? The device is curved.</p> <p>25 A. Yes. 12:16:52</p> <p style="text-align: right;">Page 149</p>

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<p>1 Q. So you say in your declaration the patent claim 2 assemblies are curved, but you say they don't need to be 3 so. You're looking at figure 1. Do you have figure 1 4 there? 5 A. Yes. 12:17:09 6 Q. 210. They look curved, don't they? 7 A. Yes, they do. 8 Q. Look at figure 5, please, sir. 9 A. Yes. 10 Q. 210. They look curved, don't they? 12:17:22 11 A. Yes, they do. 12 Q. Is there any figure in the patent that shows the 13 slide bases that are not curved? 14 A. No. And I stand corrected. My last statement 15 was clearly in error. 12:17:41 16 Q. So that part of defendant's construction, not so 17 bad; right? Curved structure supports the finger 18 button. At least the structure is curved. We can agree 19 on that; right? 20 A. Yes. So technically speaking, it doesn't say the 12:18:04 21 slide base, it says the slide assemblies. But I'm not 22 about to argue that the base is not curved. 23 Q. Okay. I think you said a minute ago, we were 24 looking at figure 5, the slide base, the bottom view. 25 It's the bottom of the slide base; right? 12:18:30 Page 150</p>	<p>1 A. No, not in that particular sentence. 2 Q. Okay. In the context of the 358 patent, does the 3 patent give the term slide base an uncommon meaning? 4 A. Well, base can be defined as the bottom surface, 5 or the base could be defined as the lower portion of an 12:20:27 6 object, and so I don't think that it is an unusual 7 construction of the definition. 8 Q. So the plain, ordinary meaning of the term 9 applies; right? 10 A. I think so. 12:20:46 11 Q. Do you think the meaning of slide base is clear 12 after you considered the patent and the file history? 13 A. Yes. 14 Q. Let's look at paragraph 13 of your declaration. 15 Back to the bottom of page 4 of 6 of your declaration; 12:21:34 16 right, sir? 17 A. Yes. 18 Q. Okay. Also, this claim term -- okay. The claim 19 term is described in that paragraph as slide base 20 channel. Page 11 of the plaintiff's brief, it's also 12:21:48 21 discussed this, if you want to flip there for quick 22 reference. You might look at that. 23 A. Sorry, paragraph 11? 24 Q. I'm sorry, page 11 of 15. Do you have all that? 25 A. Uh-huh. 12:22:17 Page 152</p>
<p>1 A. Yes. 2 Q. And so the bottom of the slide base supports the 3 slide; right? 4 A. Everything supports the slide that I mentioned 5 before. The bottom plate supports it, the face plate 12:18:40 6 surface supports it, and the slide base supports it. 7 Without all of those elements, it doesn't work. They 8 all support it. And finger holes do as well, because 9 they limit the movement of the button. 10 Q. What you just told me, that's not in your 12:19:05 11 declaration, is it? 12 A. Where? 13 Q. I asked you if -- we looked at the bottom of the 14 slide base, 210. I think you said earlier it supports 15 the slide. You said no, everything else does, too, the 12:19:18 16 base, the front plate, the finger hole. But that 17 explanation you just gave me, that's not in your 18 declaration, is it? 19 A. No. 20 Q. It's not there? 12:19:43 21 A. They're not there, nor are the protrusions, 22 plurality of protrusions. That doesn't mean that I 23 don't recognize that they exist. 24 Q. But they're not in your declaration, clearly; 25 correct? 12:19:58 Page 151</p>	<p>1 Q. You wrote paragraph 13. I assume you know what 2 is contained therein -- are you all right? 3 A. They have modesty panels on these two, and 4 there's just enough room to stick my legs in between 5 them. Being the modest person that I am, I'm running 12:22:37 6 into them a lot. 7 Q. We'll tell the hotel, lodge a claim after we're 8 done here. 9 Okay, back to the patent. The first sentence of 10 paragraph 13 reads: In the context of the patent and 12:22:49 11 file history, the term slide base channel means the 12 channel area through which the slide base travels. 13 That's stated in your declaration; right? 14 A. That is. 15 Q. And I understand, as of this morning, plaintiff 12:23:02 16 is taking a different construction; correct? 17 A. Yes. 18 Q. And that construction is a recessed area on the 19 top surface of the slide base. 20 A. Correct. 12:23:14 21 Q. Is that your understanding as well? 22 A. Yes. 23 Q. We got that via e-mail from counsel for plaintiff 24 this morning, about 7:30 or so. 25 A. Yes. 12:23:22 Page 153</p>

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<p>1 Q. So when did you arrive at this new construction?</p> <p>2 A. Well, I've been conflicted about this</p> <p>3 construction for some time. Largely because of the use</p> <p>4 of cavity in this application, and use of cavity in the</p> <p>5 term slide gate cavity, and both have a direct 12:23:50</p> <p>6 relationship to the finger buttons. And so in this</p> <p>7 declaration, paragraph 13, I misconstrued the term</p> <p>8 finger button channel with slide gate.</p> <p>9 Q. With slide base channel?</p> <p>10 A. The slide base channel, yes. So it's wrong. And 12:24:22</p> <p>11 I understand that 240, this slide base channel, is a</p> <p>12 recessed area on the top surface of the base, slide by</p> <p>13 the base.</p> <p>14 Q. And you're looking at figure 1; right?</p> <p>15 A. Figure 1, number 2 -- 230 is the one that points 12:24:45</p> <p>16 to this.</p> <p>17 Q. Slide base channel; right?</p> <p>18 A. And 240 points to the surface of the channel.</p> <p>19 Q. Okay.</p> <p>20 A. Part of my confusion was that it didn't look like 12:24:59</p> <p>21 a channel, by my understanding of the term channel. But</p> <p>22 I got -- was able to magnify -- since the writing of the</p> <p>23 declaration, I was able to magnify the patent to the</p> <p>24 point where I could see some detail in this drawing that</p> <p>25 does graphically indicate a channel, albeit a very 12:25:24</p> <p style="text-align: right;">Page 154</p>	<p>1 channel?</p> <p>2 A. I think so.</p> <p>3 Q. Okay. You needed the magnified version to</p> <p>4 actually get there, though; right?</p> <p>5 A. Well, you can see from even your copy, that the 12:27:46</p> <p>6 line quality is not really strong. You can see in this</p> <p>7 front edge of that recessed channel, there is a double</p> <p>8 line that's back from the edge of the base. I could see</p> <p>9 that. So that's first clue. And then enlarging it</p> <p>10 verified that for me. 12:28:15</p> <p>11 Q. So this clarification or correction of the</p> <p>12 construction occurred by you looking at a blown-up copy</p> <p>13 of the patent, not by considering any other material; is</p> <p>14 that right?</p> <p>15 A. No. The text of the patent had a lot to do with 12:28:37</p> <p>16 it.</p> <p>17 Q. Okay. Just --</p> <p>18 A. And I was having some conflict between what I was</p> <p>19 seeing here, what I was reading in the patent, and the</p> <p>20 fact that channel and cavity were being used kind of 12:28:47</p> <p>21 interposably. I think it's confusing. If I were</p> <p>22 writing the patent, I would have used two separate</p> <p>23 terms.</p> <p>24 Q. Do you think the meaning of this claim term --</p> <p>25 A. That's the whistle telling all the people working 12:29:21</p> <p style="text-align: right;">Page 156</p>
<p>1 shallow channel. But there is a dimensional drop on</p> <p>2 that surface.</p> <p>3 Q. Okay. So was that based on -- I assume you say</p> <p>4 magnify like a blow-up copy, like a magnifying glass?</p> <p>5 A. I blew up the digital file. 12:25:47</p> <p>6 Q. Like 150 times, just made it bigger?</p> <p>7 A. Yes.</p> <p>8 Q. When did you do that?</p> <p>9 A. It was after the writing of the declaration.</p> <p>10 Q. Was it recently, like in the last week? 12:25:58</p> <p>11 A. It was in the last -- well, it's been two weeks</p> <p>12 since the declaration. It's been about the last week,</p> <p>13 yeah.</p> <p>14 Q. I'm going to ask you a question. I don't want to</p> <p>15 know exactly what you said or exactly what he said, but 12:26:16</p> <p>16 did you communicate this to counsel, your change of</p> <p>17 opinion on this claim term?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know about when you did that?</p> <p>20 A. I think we've been discussing it. Initially 12:26:28</p> <p>21 discussed it a few days ago, and reached an agreement</p> <p>22 yesterday evening.</p> <p>23 Q. So without magnifying the drawing, like with a</p> <p>24 magnifying glass, would a person of ordinary skill in</p> <p>25 the art understand the meaning of the claim term 12:27:27</p> <p style="text-align: right;">Page 155</p>	<p>1 at the train factory they can go home -- I guess it's</p> <p>2 lunch now. Sorry.</p> <p>3 Q. Do you think that the meaning of slide base</p> <p>4 channel is clear, after considering the patent?</p> <p>5 A. Yes, it's clear to me. 12:29:44</p> <p>6 Q. And slide base channel has its plain, ordinary</p> <p>7 meaning here; right?</p> <p>8 A. Yes. I believe in the joint --</p> <p>9 Q. I didn't bring the joint statement.</p> <p>10 A. Okay. I believe in that, there was some 12:30:10</p> <p>11 definitions that were there, and that is when I went</p> <p>12 back to my definitions, to see if they were compatible,</p> <p>13 because I think that had a definition for channel, and I</p> <p>14 wanted to compare that with hollow, and my comparison</p> <p>15 led me to believe that they're really the same thing. 12:30:34</p> <p>16 Q. Can I see Exhibit 7?</p> <p>17 I see in your joint claim of construction</p> <p>18 statement, my recollection is the defendants provided a</p> <p>19 definition of channel. Is there a page missing from</p> <p>20 this? 12:31:07</p> <p>21 A. There's three.</p> <p>22 Q. Three pages. Okay, sorry. Never mind.</p> <p>23 So it's clear to you, as an expert in this</p> <p>24 case, the meaning of slide base channel, from looking at</p> <p>25 the magnified image -- 12:31:26</p> <p style="text-align: right;">Page 157</p>

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<p>1 A. Yes.</p> <p>2 Q. -- figure 1, do you think it would be clear to a</p> <p>3 person of ordinary skill in the art, reading the patent,</p> <p>4 knowing the meaning of the word slide base channel?</p> <p>5 A. I think so. 12:31:35</p> <p>6 Q. Okay.</p> <p>7 A. Eventually.</p> <p>8 Q. If they look at the figure?</p> <p>9 A. If they look at it long enough and hard enough,</p> <p>10 and compare it to the slide gate cavity, they'll be able 12:31:50</p> <p>11 to -- I was able to figure out, finally, the difference</p> <p>12 between them.</p> <p>13 Q. So plaintiff's construction is a recessed area on</p> <p>14 the top surface of the slide base; right? I didn't</p> <p>15 bring the e-mail I have it in, but I have it written 12:32:13</p> <p>16 down on my copy of the brief.</p> <p>17 A. Yes.</p> <p>18 Q. The defendant's construction is a groove in the</p> <p>19 user facing portion of the slide base. Are those</p> <p>20 constructions all that different? 12:32:24</p> <p>21 A. Well, a groove to me indicates something like if</p> <p>22 I got my pen-knife out and I scraped it along here, it</p> <p>23 will create a groove, more of a very narrow indentation</p> <p>24 in the surface. And I see this more as a channel. If</p> <p>25 you think of, like an irrigation channel shape, more 12:32:45</p> <p style="text-align: right;">Page 158</p>	<p>1 figure 5 -- figure 1, essentially; right?</p> <p>2 A. Yeah, figure 1, and also the -- yeah, the slide</p> <p>3 base channel definition, 230.</p> <p>4 Q. Would you agree with me that it seems, from your</p> <p>5 testimony today and the construction, it's your position 12:35:35</p> <p>6 that the ordinary and customary meaning of the word</p> <p>7 channel is a recessed area; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And you're saying a U-shaped channel as different</p> <p>10 from a V-shaped channel? 12:36:07</p> <p>11 A. It doesn't show a V-shaped channel. It shows a</p> <p>12 channel that's flat from side to side.</p> <p>13 Q. And you're interpreting groove as a V-shaped</p> <p>14 channel; that's your consideration?</p> <p>15 A. Yes. 12:36:23</p> <p>16 Q. Did you rely on a dictionary for that?</p> <p>17 A. No, just experience.</p> <p>18 Q. That's your opinion?</p> <p>19 A. Yes.</p> <p>20 Q. And you're not going to cite a dictionary or a 12:36:28</p> <p>21 treatise or a publication saying a groove is a narrow</p> <p>22 V-shaped channel?</p> <p>23 A. No. In education we try to be very clear and</p> <p>24 specific about terms we use when we're describing our</p> <p>25 designs, and we drill that into students. And it's 12:36:44</p> <p style="text-align: right;">Page 160</p>
<p>1 like I'm describing a broad U shape.</p> <p>2 Q. A flat U versus a V?</p> <p>3 A. Yeah. So that would be my interpretation.</p> <p>4 Q. Would you agree -- I'm sorry, go ahead.</p> <p>5 A. That would be my interpretation of those two 12:33:01</p> <p>6 terms, and --</p> <p>7 Q. The terms being recess and groove; right?</p> <p>8 A. Between a recessed channel and a groove. My</p> <p>9 preference would be a recessed channel is more</p> <p>10 descriptive accurately, from my point of view. 12:33:17</p> <p>11 Q. Would you agree with me that those definitions</p> <p>12 are pretty close? They're sort of shades of the same</p> <p>13 color, aren't they?</p> <p>14 MR. PEELER: Objection; asked and answered.</p> <p>15 THE WITNESS: I see a difference in them. 12:33:27</p> <p>16 BY MR. HOGAN:</p> <p>17 Q. Okay. One is V-shaped, one is U-shaped?</p> <p>18 A. Yes.</p> <p>19 Q. So just to back up, to make sure we're all the</p> <p>20 same wavelength here, paragraph 13 in your declaration, 12:34:05</p> <p>21 the citation to column 7, Line 64, column 8, line 12,</p> <p>22 are you still relying on that for the construction? I</p> <p>23 would say no.</p> <p>24 A. Yeah, I would say no.</p> <p>25 Q. Okay. So you're relying on the dictionary of -- 12:34:21</p> <p style="text-align: right;">Page 159</p>	<p>1 important also, as a professional, to try to be as</p> <p>2 accurate -- descriptive and accurate as we can be, so</p> <p>3 there's no misunderstanding.</p> <p>4 Q. Do you think a person of ordinary skill in the</p> <p>5 art -- let's take your first cut at that -- little to no 12:37:03</p> <p>6 education and experience in taking pills, do you think</p> <p>7 their term would be a narrow groove-shaped channel, or</p> <p>8 could be just like a recessed area?</p> <p>9 A. I think, if you put a drawing of a rectangle in</p> <p>10 front of somebody and say draw a channel in this from 12:37:24</p> <p>11 side view, and then give another sheet, now draw a</p> <p>12 groove, I think you would get different things. My</p> <p>13 feeling is that you would get something close to what</p> <p>14 I'm describing, that a groove might just be a irregular</p> <p>15 kind of shape. 12:37:49</p> <p>16 Q. Some difference. Okay.</p> <p>17 Let's turn to paragraph 14 of your declaration.</p> <p>18 It's on page 5 of 6. You might also talk about the</p> <p>19 plaintiff's claim construction on page 12 of 15. Do you</p> <p>20 have that handy, in case you need it? 12:38:10</p> <p>21 A. Yes.</p> <p>22 Q. Does the change of your construction of slide</p> <p>23 base channel affect your construction of slide base</p> <p>24 channel surface having a distinctive coloring?</p> <p>25 A. No. 12:38:54</p> <p style="text-align: right;">Page 161</p>

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<p>1 Q. No. Why not?</p> <p>2 A. Because I was wrong in that previous</p> <p>3 interpretation, and I believe that I'm correct.</p> <p>4 Q. 13 was wrong, as you testified a minute ago. 14</p> <p>5 is okay, though; right? 12:39:18</p> <p>6 A. Yes.</p> <p>7 Q. And 14, I'm going to read the first sentence of</p> <p>8 14: In the context of the patent and file history, the</p> <p>9 term slide base channel surface having distinctive</p> <p>10 coloring means the surface of the slide base channel 12:39:41</p> <p>11 that has distinctive coloring.</p> <p>12 A. Yes.</p> <p>13 Q. I read that correctly, if inartfully?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I asked you about whether the change of 12:39:50</p> <p>16 your position on slide base channel affected this,</p> <p>17 because this construction incorporates slide base</p> <p>18 channel in it.</p> <p>19 A. Yes.</p> <p>20 Q. Can you explain that to me? 12:39:57</p> <p>21 A. I think I was -- I don't know that I have a good</p> <p>22 explanation of that, other than I just got confused</p> <p>23 between slide gate cavity and slide gate channel in the</p> <p>24 context of the movement of the...</p> <p>25 Q. Okay. 12:40:30</p> <p style="text-align: right;">Page 162</p>	<p>1 Q. Why?</p> <p>2 A. I think I answered that.</p> <p>3 Q. You told me about the mistake and confusion with</p> <p>4 cavity and channel; I got that. But given that it's</p> <p>5 slide base channel is the underlying foundation of this 12:41:59</p> <p>6 construction and that has changed this morning, so your</p> <p>7 testimony has no impact on the meaning of this claim</p> <p>8 term; is that right?</p> <p>9 A. Yeah. I just confused slide gate channel with</p> <p>10 slide gate cavity. Simple as that. Indefensible, but 12:42:20</p> <p>11 that's what happened.</p> <p>12 Q. Things happen all the time. No problem.</p> <p>13 A. In a perfect world, nothing is perfect.</p> <p>14 Q. So do you think there's any unique or uncommon</p> <p>15 meaning to this claim term? 12:42:51</p> <p>16 A. No. I think it's clearly defined by the reading</p> <p>17 of the text in conjunction with viewing of the drawings.</p> <p>18 It's not -- I don't like the term. I think the term in</p> <p>19 itself is somewhat confusing.</p> <p>20 As I said before, I probably would have made 12:43:31</p> <p>21 an effort, were I involved in the -- defining these</p> <p>22 terms, to give a little bit more clarity and</p> <p>23 differentiation between some of the terms.</p> <p>24 Q. Why is it significant that the specific coloring</p> <p>25 be on the slide base channel? Sorry, slide base channel 12:44:02</p> <p style="text-align: right;">Page 164</p>
<p>1 A. It was a mistake.</p> <p>2 Q. I guess I'm trying -- I'm not trying to beat you</p> <p>3 up on slide base channel only. It's talking about slide</p> <p>4 base channel surface having a distinctive coloring.</p> <p>5 A. Yes. 12:40:39</p> <p>6 Q. And I guess my question is, based on the change</p> <p>7 of interpretation of slide base channel, what impact on</p> <p>8 slide base channel surface has a distinctive coloring?</p> <p>9 MR. PEELER: Objection.</p> <p>10 THE WITNESS: Recognizing my error in the 12:40:57</p> <p>11 previous section didn't change my mind about this. I</p> <p>12 was wrong with that one, I was right with this one.</p> <p>13 BY MR. HOGAN:</p> <p>14 Q. Okay. So even though -- I'm looking at the</p> <p>15 brief, and it's actually in your -- I'll read it from 12:41:19</p> <p>16 your declaration. First sentence begins: The term</p> <p>17 slide base channel surface having distinctive coloring</p> <p>18 means the surface of the slide base channel that has</p> <p>19 distinctive coloring.</p> <p>20 Slide base channel is in that construction, but 12:41:34</p> <p>21 it's your position that despite the change I've been</p> <p>22 getting on slide base channel, your construction and</p> <p>23 opinion on the meaning of slide base channel having</p> <p>24 distinctive coloring is unaffected; is that right?</p> <p>25 A. Yes. 12:41:49</p> <p style="text-align: right;">Page 163</p>	<p>1 surface? I'll ask the question again. I'll reask it.</p> <p>2 Why is it significant that distinctive</p> <p>3 coloring be on the slide base channel surface?</p> <p>4 A. I think at some point in the text of the patent,</p> <p>5 it says that the slide base surface may be colored. So 12:44:28</p> <p>6 in my mind, that means that there could be other means</p> <p>7 of identifying through color. The color could be on the</p> <p>8 body of the device. It could also be a different color</p> <p>9 on either side of the finger button. So I interpreted</p> <p>10 that reading to mean that the color indication doesn't 12:44:55</p> <p>11 have to be on that surface.</p> <p>12 Q. Okay. That's not what I asked you, though.</p> <p>13 A. Although --</p> <p>14 Q. What's the significance of the color?</p> <p>15 A. What's what? 12:45:08</p> <p>16 Q. The significance of the color. Why is the color</p> <p>17 there? What function does the color serve?</p> <p>18 A. Indicates dosage taken.</p> <p>19 Q. That's right. The patent describes red or green</p> <p>20 for not taken or taken; right? 12:45:17</p> <p>21 A. Uh-huh.</p> <p>22 Q. So you just said that the colors could be on the</p> <p>23 back plate. Did I hear you right?</p> <p>24 A. Colors could be on the face plate. The colors</p> <p>25 could also be on either side of the finger button. 12:45:41</p> <p style="text-align: right;">Page 165</p>

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<p>1 There are other ways of doing it. There's also just the</p> <p>2 position of the switch, which is an indicator, too, of</p> <p>3 the button. And particularly instructive for blind</p> <p>4 people, because they can't see the color.</p> <p>5 Q. Right. I understand printed with Braille on some 12:46:08</p> <p>6 of the color. Okay?</p> <p>7 A. Yes.</p> <p>8 Q. All of the figures show the slide based channel</p> <p>9 surface with distinctive coloring on the slide base,</p> <p>10 don't they? 12:46:19</p> <p>11 A. Yes.</p> <p>12 Q. There's no figures, there's no description in the</p> <p>13 patent of the coloring being on the face plate, is</p> <p>14 there?</p> <p>15 A. Other than the reference that I referred to that 12:46:26</p> <p>16 said they may be colored. It doesn't mean --</p> <p>17 Q. The slide base channel surface may be colored?</p> <p>18 A. May be colored.</p> <p>19 Q. And actually, I meant ones they are colored;</p> <p>20 right? They're red and green. 12:46:43</p> <p>21 A. Later in the patent it describes as being</p> <p>22 colored.</p> <p>23 Q. So you're talking about the defendants' claims</p> <p>24 talk about a tactile or nontactile indicator on the face</p> <p>25 plate; right? 12:46:53</p> <p style="text-align: right;">Page 166</p>	<p>1 Q. It says: I offer this declaration in connection</p> <p>2 with the plaintiff's opening brief on claim</p> <p>3 construction. This declaration does not include all of</p> <p>4 my opinions -- I'm sorry. This declaration does not</p> <p>5 include all opinions I may offer in this lawsuit. Did I 12:59:34</p> <p>6 read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. What does that last sentence mean?</p> <p>9 MR. PEELER: Without disclosing what -- the</p> <p>10 substance of topics you and I have discussed beyond 12:59:45</p> <p>11 claim construction.</p> <p>12 BY MR. HOGAN:</p> <p>13 Q. I don't want to know what you told your lawyer,</p> <p>14 he told you. I want to know what that means to you.</p> <p>15 A. It means that I will, if asked, write a report 12:59:55</p> <p>16 stating my reasons for believing that there is</p> <p>17 infringement.</p> <p>18 Q. Patent infringement?</p> <p>19 A. Patent infringement.</p> <p>20 Q. Trade dress infringement? 01:00:17</p> <p>21 MR. PEELER: Don't. I mean, just don't --</p> <p>22 if asked.</p> <p>23 THE WITNESS: If asked.</p> <p>24 BY MR. HOGAN:</p> <p>25 Q. Trademark infringement, if asked? 01:00:21</p> <p style="text-align: right;">Page 168</p>
<p>1 A. Uh-huh.</p> <p>2 Q. Or they can be Braille on the face plate; right?</p> <p>3 A. Yes.</p> <p>4 Q. That's not distinctive coloring. The distinctive</p> <p>5 coloring has got to be on the slide base channel 12:47:01</p> <p>6 surface; right? That's what's shown and what's claimed;</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 MR. HOGAN: I'm getting close to the end.</p> <p>10 Can we take a short break and I'll collect my notes? 12:47:46</p> <p>11 I'll probably have some more questions, so we're not</p> <p>12 done yet. Can I collect my notes?</p> <p>13 MR. PEELER: Sure.</p> <p>14 MR. HOGAN: Five-ish? Five, ten?</p> <p>15 THE VIDEOGRAPHER: Off the record, 12:48. 12:48:02</p> <p>16 (A recess ensued.)</p> <p>17 THE VIDEOGRAPHER: Back on the record at</p> <p>18 12:59.</p> <p>19 BY MR. HOGAN:</p> <p>20 Q. We were talking about your declaration before the 12:59:03</p> <p>21 break. Remember that, sir?</p> <p>22 A. Yes.</p> <p>23 Q. Paragraph 15 of your declaration, it's on page 5</p> <p>24 of 6.</p> <p>25 A. Yes. 12:59:20</p> <p style="text-align: right;">Page 167</p>	<p>1 A. If asked.</p> <p>2 Q. Do you know anything about copyrights?</p> <p>3 A. Yes.</p> <p>4 Q. Copyright infringement report, if asked?</p> <p>5 A. Yes. 01:00:30</p> <p>6 Q. You haven't prepared those at this point, have</p> <p>7 you?</p> <p>8 A. No.</p> <p>9 Q. Do you have any other opinions on the meaning of</p> <p>10 any of the claim terms in the 358 patent, apart from 01:00:39</p> <p>11 what is in your declaration that we talked about today?</p> <p>12 A. No, not at this time.</p> <p>13 Q. And I include in that the slide base channel</p> <p>14 update today.</p> <p>15 A. Yes. 01:00:53</p> <p>16 Q. Okay. Any other opinions, you said no, they're</p> <p>17 all in the report; right? All in the declaration. I'm</p> <p>18 sorry, strike that. Let me ask that again. It was not</p> <p>19 a clear question.</p> <p>20 All your opinions on the meaning of the claim 01:01:11</p> <p>21 terms, they're in the declaration as written, with the</p> <p>22 addition from this morning; right?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have any other opinions on any of the</p> <p>25 claim terms, whether in dispute or not, in the 358 01:01:22</p> <p style="text-align: right;">Page 169</p>

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<p>1 patent, that are not in your report, other than we</p> <p>2 talked about today?</p> <p>3 A. Not --</p> <p>4 MR. PEELER: Let me object that that's</p> <p>5 outside the scope, but you can answer it. 01:01:36</p> <p>6 THE WITNESS: Yeah, I reviewed the -- my</p> <p>7 report, my declaration, and I'm satisfied with all of</p> <p>8 the definitions as amended today.</p> <p>9 BY MR. HOGAN:</p> <p>10 Q. Okay. And you have no other opinions of any 01:01:52</p> <p>11 other claim terms as you sit here today; is that right?</p> <p>12 A. No, I don't have any other opinions today.</p> <p>13 Q. Is there anything else you want to state about</p> <p>14 your declaration or your interpretation of the claim</p> <p>15 terms that you've not already said today? 01:02:14</p> <p>16 MR. PEELER: Objection.</p> <p>17 THE WITNESS: I don't have any other</p> <p>18 questions for you to ask me.</p> <p>19 BY MR. HOGAN:</p> <p>20 Q. You want to go home, I understand. 01:02:29</p> <p>21 Is there any other opinions you have</p> <p>22 about -- sorry. Try that again.</p> <p>23 Is there any other opinions you have about</p> <p>24 defendant's construction, not in your report or talked</p> <p>25 about it today? 01:02:44</p> <p style="text-align: right;">Page 170</p>	<p>1 A. Uh-huh.</p> <p>2 Q. Did that include the generally visible sides of</p> <p>3 the front plate?</p> <p>4 A. There is -- well, the front plate is -- let me</p> <p>5 find my -- so front plate is 110, the structure of this. 01:05:18</p> <p>6 And the top side, I think in the patent it refers to it</p> <p>7 having a top side, a left side, and a right side. And</p> <p>8 this is the front plate, and there's a top and there's a</p> <p>9 bottom, and so the bottom would be what we referred to</p> <p>10 as the base before, in terms of finger buttons. So 01:05:58</p> <p>11 everything that we see here is on the top side, not the</p> <p>12 bottom side. And I think there was a -- sorry. So all</p> <p>13 of the sides are missing a part of the top side.</p> <p>14 And in normal use, I think there is the term</p> <p>15 called user facing. Well, this device is attached to a 01:06:57</p> <p>16 prescription vial. And if you've used a prescription</p> <p>17 vial, and if you haven't, God bless you, you're very</p> <p>18 lucky, but you know that the instructions and the words</p> <p>19 are wrapped around the vial. They're difficult to read,</p> <p>20 because you have to hold the vial and turn it as you're 01:07:19</p> <p>21 reading. And for somebody with impaired vision or</p> <p>22 limited dexterity -- all those things that you need</p> <p>23 medicine for does that -- it's very difficult. But in</p> <p>24 the course of user interaction, they are turning the</p> <p>25 vial, and so they are going to see all of the surfaces 01:07:41</p> <p style="text-align: right;">Page 172</p>
<p>1 A. No, I've expressed my opinions.</p> <p>2 Q. Apart from paragraph 4 in your report, which</p> <p>3 references patent file history, and there's Exhibit 1 we</p> <p>4 looked at today, the list of things you reviewed --</p> <p>5 A. Yes. 01:03:50</p> <p>6 Q. -- and we also got the definition this morning</p> <p>7 regarding cavity and slide base channel.</p> <p>8 A. Uh-huh.</p> <p>9 Q. Apart from those materials and the information</p> <p>10 identified in Exhibit 1, is there anything else that you 01:03:59</p> <p>11 have relied upon or considered in forming the opinions</p> <p>12 as stated in your affidavit -- sorry, declaration?</p> <p>13 A. No. Those are all from material, articles that</p> <p>14 I've considered.</p> <p>15 MR. HOGAN: I think right now, at this 01:04:22</p> <p>16 moment, we have no more further questions for</p> <p>17 Mr. Kemnitzer. We reserve the right, if he puts another</p> <p>18 report in on this case, to depose him again. But for</p> <p>19 right now, I'm done.</p> <p>20 MR. PEELER: I've just got one follow-up. 01:04:33</p> <p>21</p> <p>22 EXAMINATION</p> <p>23 BY MR. PEELER:</p> <p>24 Q. You were asked some questions about front plate,</p> <p>25 top side. 01:04:41</p> <p style="text-align: right;">Page 171</p>	<p>1 of that top plate.</p> <p>2 MR. PEELER: Those are the questions I have.</p> <p>3 MR. HOGAN: I'm going to follow that up with</p> <p>4 a few questions.</p> <p>5</p> <p>6 FURTHER EXAMINATION</p> <p>7 BY MR. HOGAN:</p> <p>8 Q. You said 110 is the front plate. 110 is the</p> <p>9 front plate body, 100 is the front plate.</p> <p>10 A. Yeah. But 110, the body contains all of the 01:08:06</p> <p>11 other components.</p> <p>12 Q. That's your testimony, front plate body, 110,</p> <p>13 contains all the other components, 120, 140, 130, 180;</p> <p>14 is that right?</p> <p>15 A. In terms of this definition, front plate, top 01:08:26</p> <p>16 side, I think this is the front plate on the 100. The</p> <p>17 top side is everything we see here. The bottom side is</p> <p>18 everything we don't see here, on the other side. All</p> <p>19 right?</p> <p>20 Q. Okay. And the explanation you gave opposing 01:08:45</p> <p>21 counsel, Mr. Peeler, to his question about the meaning</p> <p>22 of front plate, top side, none of that explanation is in</p> <p>23 your declaration; am I right?</p> <p>24 A. I believe I say that it's -- that 150 involves</p> <p>25 the top side, the whole structure that we see here. 01:09:06</p> <p style="text-align: right;">Page 173</p>

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<div>1 Q. I'm sorry, 150 or 115?</div> <div>2 A. No, 110.</div> <div>3 Q. 110.</div> <div>4 A. Sorry.</div> <div>5 But the -- your construction of the user 01:09:17</div> <div>6 facing surface of the front plate, I think is maybe</div> <div>7 incorrect, because if a user is using it, as I just</div> <div>8 said, he's going to see all the surfaces.</div> <div>9 Q. In paragraph 7 of your declaration, that's where</div> <div>10 you talk about meaning of front plate, top side, and you 01:09:39</div> <div>11 have two sentences that criticize defendant's</div> <div>12 construction. And the explanation you just gave about</div> <div>13 the pill bottle with the label wrapped around it, none</div> <div>14 of that is in paragraph 7; correct?</div> <div>15 A. Yes. Front plate, top side, simply refers to the 01:09:55</div> <div>16 top side of the front plate, as distinguished from the</div> <div>17 bottom side.</div> <div>18 MR. HOGAN: I think we're done.</div> <div>19 MR. PEELER: Great, thank you.</div> <div>20 THE VIDEOGRAPHER: Off the record at 1:10. 01:10:47</div> <div>21 (The deposition concluded at 1:10 p.m.)</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 174</div>	
<div>1 REPORTER'S CERTIFICATE</div> <div>2</div> <div>3</div> <div>4 I, CECELIA BROOKMAN, RPR, certify:</div> <div>5 That the foregoing proceedings were taken</div> <div>6 before me at the time and place therein set forth, at</div> <div>7 which time the witness was put under oath by me;</div> <div>8 That the testimony of the witness, the</div> <div>9 questions propounded, and all objections and statements</div> <div>10 made at the time of the examination were recorded</div> <div>11 stenographically by me and were thereafter transcribed;</div> <div>12 That the foregoing is a true and correct</div> <div>13 transcript of my shorthand notes so taken.</div> <div>14 I further certify that I am not a relative</div> <div>15 or employee of any attorney of the parties, nor</div> <div>16 financially interested in the action.</div> <div>17 I declare under penalty of perjury under the</div> <div>18 laws of Virginia that the foregoing is true and correct.</div> <div>19 Dated this day of , 2015.</div> <div>20</div> <div>21</div> <div>22</div> <div>23 CECELIA BROOKMAN, RPR</div> <div>24</div> <div>25</div> <div>Page 175</div>	

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